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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy, submitted in accordance with Commission resolution 1999/31

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Executive summary

This is the sixth annual report of the Special Rapporteur whose mandate, created by Commission resolution 1994/41, called upon him

(a) To inquire into any substantial allegations transmitted to him or her and report his or her conclusions thereon,

(b) To identify and record not only attacks on the independence of the judiciary, lawyers and court officials but also progress achieved in protecting and enhancing their independence, and make recommendations including the provision of advisory services or technical assistance when they are requested by the State concerned,

(c) To study, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers

The report contains seven chapters dealing with his methods of work, the activities undertaken during the year, some theoretical issues, some judicial decisions reflecting the independence and impartiality of the judiciary, situations in 51 countries or territories and his conclusions and recommendations. During the year the Special Rapporteur sent out several interventions including 11 urgent appeals and 19 urgent appeals in association with other special rapporteurs

In the course of the year, the Special Rapporteur undertook a visit to Guatemala and a separate report on this mission will be before the Commission. The Special Rapporteur has expressed his disappointment and embarrassment over the abrupt cancellation of a mission to South Africa in November owing to the non-availability of funds

The Special Rapporteur has included in the present document a report of his follow-up mission to Belgium from 24 to 26 November (see E/CN.4/1998/39/Add.4). He has also summarized the developments concerning the implementation of the Advisory Opinion of the International Court of Justice by the Government of Malaysia and the courts. With regard to the United Kingdom of Great Britain and Northern Ireland, the Special Rapporteur has expressed his continued concerns over the investigations into the murders of Patrick Finucane and Rosemary Nelson. With regard to Switzerland, the Special Rapporteur has urged the Government to offer adequate compensation to Mr. Clement Nwankwo

The Special Rapporteur has also drawn the attention of the Commission to the invitations extended to him by the Governments of South Africa, Belarus and Mexico; he would plan to undertake missions to those countries in April, June and September, respectively. He has also drawn attention to the invitation by the Government of Saudi Arabia to undertake a mission to that country. The details, including the dates, are currently being discussed

Among the recommendations, the Special Rapporteur has once again called upon the Government of the United Kingdom of Great Britain and Northern Ireland to establish an independent judicial inquiry into the murder of Patrick Finucane. He has also urged the Commission to give serious consideration to provide a monitoring mechanism to implement the Declaration on the Right and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the General Assembly by its resolution 53/144

Introduction

1 The present report is submitted pursuant to Commission on Human Rights resolution 1999/31. It is the sixth annual report to the Commission by the Special Rapporteur since the mandate was established by the Commission in its resolution 1994/41, renewed in resolution 1997/23 and endorsed by the Economic and Social Council in its decision 1997/245 (see also E/CN.4/1995/39, E/CN.4/1996/57, E/CN.4/1997/32, E/CN.4/1998/39 and E/CN.4/1999/60).

2 Chapter I of the present report contains the term of reference for the discharge of the mandate. Chapter II refers to the methods of work applied by the Special Rapporteur in the discharge of his mandate. In chapter III, the Special Rapporteur presents an account of the activities undertaken within the framework of his mandate in the past year. Chapter IV provides a brief discussion on theoretical issues which the Special Rapporteur considers to be important for the development of an independent and impartial judiciary. Chapter V describes standards and guidelines for judges and lawyers that have been adopted or are in the process of being adopted by various associations around the world. Chapter VI contains a brief summary of judicial decisions asserting the importance of and the principle of judicial independence. Chapter VII contains brief summaries of urgent appeals and communications to and from governmental authorities, along with observations of the Special Rapporteur. Chapter VIII contains the conclusions and recommendations of the Special Rapporteur.

I. TERMS OF REFERENCE

3 At its fiftieth session, the Commission on Human Rights, in resolution 1994/41, noting both the increasing frequency of attacks on the independence of judges, lawyers and court officials and the link which exists between the weakening of safeguards for the judiciary and lawyers and the gravity and frequency of violations of human rights, requested the Chairman of the Commission to appoint, for a period of three years, a special rapporteur whose mandate would consist of the following tasks:

(a) To inquire into any substantial allegations transmitted to him or her and report his or her conclusions thereon;

(b) To identify and record not only attacks on the independence of the judiciary, lawyers and court officials but also progress achieved in protecting and enhancing their independence, and make recommendations including the provision of advisory services or technical assistance when they are requested by the State concerned;

(c) To study, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers.

4 Without substantially changing the mandate, the Commission endorsed in its resolution 1995/36 the decision of the Special Rapporteur to use, beginning in 1995, the short title "Special Rapporteur on the independence of judges and lawyers".

5 In resolutions 1995/36, 1996/34, 1997/23, 1998/35 and 1999/31 the Commission on Human Rights took note of the annual reports of the Special Rapporteur, expressing appreciation of his working methods, and requested him to submit another annual report on the activities relating to his mandate to the Commission on Human Rights.

6 Several resolutions adopted by the Commission on Human Rights at its fifty-fifth session are also pertinent to the mandate of the Special Rapporteur and have been taken into consideration in examining and analysing the information brought to his attention with regard to various countries. These resolutions are, in particular:

(a) Resolution 1999/16 on cooperation with representatives of United Nations human rights bodies, in which the Commission called upon all representatives of United Nations human rights bodies to continue to take urgent steps, in conformity with their mandates, to help prevent the occurrence of intimidation and reprisals against persons offering such cooperation and to continue to include in their respective reports a reference to allegations of intimidation or reprisal and of hampering of access to United Nations human rights procedures, as well as an account of action taken by them in this regard;

(b) Resolution 1999/27 on human rights and terrorism, in which the Commission urged all relevant human rights mechanisms and procedures, as appropriate, to address the consequences of the acts, methods and practices of terrorist groups in their forthcoming reports to the Commission;

(c) Resolution 1999/29 on hostage-taking, in which the Commission urged all thematic special rapporteurs and working groups to continue to address, as appropriate, the consequences of hostage-taking in their forthcoming reports to the Commission;

(d) Resolution 1999/34 on impunity, in which the Commission invited the special rapporteurs and other mechanisms of the Commission to continue to give due consideration to the issue of impunity in the discharge of their mandates;

(e) Resolution 1999/36 on the right to freedom of opinion and expression, in which the Commission invited the working groups, representatives and special rapporteurs of the Commission on Human Rights to pay attention, within the framework of their mandates, to the situation of persons detained, subjected to violence, ill-treated or discriminated against for having exercised the right to freedom of opinion and expression as affirmed in the relevant human rights instruments;

(f) Resolution 1999/41 on integrating the human rights of women throughout the United Nations system, in which the Commission requested all mechanisms of the Commission on Human Rights and the Sub-Commission regularly and systematically to take a gender perspective into account in the implementation of their mandates, and to include in their reports information on and qualitative analysis of human rights of women and girls, and encouraged the strengthening of cooperation and coordination in that regard;

(g) Resolution 1999/48 on the rights of persons belonging to national or ethnic, religious and linguistic minorities, in which the Commission called upon special representatives, special rapporteurs and working groups of the Commission to continue to give attention, within their respective mandates, to situations involving minorities,

(h) Resolution 1999/80 on the rights of the child, in which the Commission recommended that, within their mandates, all relevant human rights mechanisms, in particular special rapporteurs and working groups, regularly and systematically take a child's rights perspective into account in the implementation of their mandates, especially by paying attention to particular situations in which children are in danger and where their rights are violated, and that they take into account the work of the Committee on the Rights of the Child

II METHODS OF WORK

7. The Special Rapporteur, in the sixth year of his mandate, continued following the methods of work described in his first report (E/CN 4/1995/39, paras 63-93)

III ACTIVITIES OF THE SPECIAL RAPPORTEUR

A Consultations

8. The Special Rapporteur visited Geneva for his first round of consultations from 5-10 April 1999 in order to present his report to the Commission at its fifty-fifth session During this period the Special Rapporteur met with representatives of the regional groups to brief them on his work and to answer any questions they might have He also held consultations with representatives of the Governments of Paraguay and Turkey In addition, he held a briefing for interested non-governmental organizations and also met individually with several NGOs

9. The Special Rapporteur visited Geneva from 26 May to 5 June 1999 for his second round of consultations and to attend the sixth meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme, which was held from 31 May to 3 June The Special Rapporteur also attended the Workshop on Gender Integration into the Human Rights System which was held from 26 to 28 May During his visit, the Special Rapporteur met with the Permanent Representatives of Guatemala, Turkey, Australia, Ireland, Sri Lanka, Pakistan and Indonesia The Special Rapporteur also met with the Special Rapporteur on the right to education and the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo

10. The Special Rapporteur then travelled to Northern Ireland in order to participate in the Criminal Law Review Workshop on 8 and 9 June 1999 He also had several consultations, including with Deputy Commissioner John Stevens of the Metropolitan Police, who was called to reopen investigations into the murder of Patrick Finucane He also met the late Rosemary Nelson's husband, Paul Nelson, and her sister

B. Missions/visits

11. During 1999, the Special Rapporteur undertook a field mission to Guatemala (16-26 August 1999). The report on his mission, containing his findings, conclusions and recommendations, can be found in an addendum to the present report.

12. The Special Rapporteur was invited by the Government of South Africa to undertake a field mission from 22 to 26 November 1999. On 20 November 1999, the Special Rapporteur had to call off the mission owing to financial constraints of the Office of the High Commissioner. On 23 November 1999, the Special Rapporteur sent letters to the Permanent Mission of South Africa in Geneva and the Minister for Justice in Pretoria, and all the judges, lawyers and institutions he was supposed to meet during the mission expressing his deep regret over its cancellation.

13. During the period under review the Special Rapporteur also informed the Governments of Belarus, Mexico, Saudi Arabia and Sri Lanka of his wish to carry out in situ investigations. He also reminded the Governments of Cuba, Egypt, Indonesia, Pakistan, Turkey and Tunisia of his previous requests to undertake missions to those countries.

14. During his visit to Geneva from 24 to 28 January 2000, the Special Rapporteur had meetings with the Permanent Representatives of South Africa, Mexico and Belarus and is pleased to report that the respective Governments have invited him to undertake in situ missions this year to South Africa in late April, Belarus in mid-June and Mexico in mid-September.

15. The Special Rapporteur is pleased to report that the Government of Saudi Arabia has welcomed a mission from the Special Rapporteur to that country. Details and the dates are being discussed with the Permanent Mission.

C. Communications with governmental authorities

16. During the period under review, the Special Rapporteur transmitted 11 urgent appeals to the following States: Australia, Belarus (2), Belize, Brazil, Colombia, Paraguay, Pakistan (1), Philippines, and Sri Lanka (2).

17. Seeking to avoid unnecessary duplication of the activities of other thematic and country rapporteurs, the Special Rapporteur has joined during the past year with other special rapporteurs and working groups to transmit 18 urgent appeals on behalf of individuals to the Governments of the following 12 countries: Brazil (2), together with the Special Rapporteur on extrajudicial, summary or arbitrary executions; Bahrain, together with the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on freedom of opinion and expression; Colombia, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions; Democratic Republic of the Congo, together with the Special Rapporteur on torture; Indonesia (2), together with the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture; Israel (2), together with the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture; Nepal, together with the Special Rapporteur on torture; Pakistan, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions; Sudan (2), together with

the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights in the Sudan, and with the Special Rapporteur on torture, Turkey (3), together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture; United Kingdom of Great Britain and Northern Ireland, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions; and Yemen, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture.

18. The Special Rapporteur transmitted 26 communications to the governmental authorities of the following: Argentina, Brazil, China, Chile, Cameroon, Colombia, Democratic Republic of the Congo, Djibouti, Egypt, Gambia, Guatemala, Japan, Kenya, Lebanon, Mexico, Pakistan, Palestine, Peru, Philippines, Sri Lanka, South Africa, Sudan, Switzerland, Tunisia, United Kingdom of Great Britain and Northern Ireland and Yugoslavia.

19. The Special Rapporteur received replies to urgent appeals from the Governments of: Australia, Belize, Sri Lanka, Sudan and Turkey.

20. Replies to communications were received from the Governments of: Argentina, Belize, Colombia, China, Djibouti, Egypt, Guatemala, Japan, Kenya, New Zealand, Pakistan, Sri Lanka, Sudan, Switzerland, Tunisia and Turkey. Other communications were received from the Governments of Colombia and Turkey.

D. Cooperation with intergovernmental and non-governmental organizations

21. The Special Rapporteur has continued the dialogue with intergovernmental and non-governmental organizations in the implementation of his mandate and thanks these organizations for their cooperation and assistance during the year.

E. Cooperation with other United Nations procedures and bodies

1. Special rapporteurs and working groups of the Commission on Human Rights

22. The Special Rapporteur has continued to work closely with other special rapporteurs and working groups. As previously indicated, in order to avoid duplication he has, where appropriate, made joint interventions with other special rapporteurs and/or working groups. On issues relevant to his mandate, the Special Rapporteur makes reference in the present report to reports of other special rapporteurs and working groups.

2. The Centre for International Crime Prevention of the United Nations Secretariat

23. In his third, fourth and fifth reports (E/CN.4/1997/32, paras. 26-37; E/CN.4/1998/39, paras. 23-24; E/CN.4/1999/60, paras. 28-34), the Special Rapporteur referred to the importance of the work done by the former Crime Prevention and Criminal Justice Divisions in overseeing the implementation of the Basic Principles on the Independence of the Judiciary. The Special Rapporteur was unable to attend the eighth session of the Commission on Crime Prevention and Criminal Justice in April 1999. However, he continued to receive assistance from the secretariat as and when needed with regard to standards.

IV. THEORETICAL ISSUES

A. Honour killings

27. In the report submitted to the fifty-fifth session of the Commission on Human Rights, the Special Rapporteur stated that the Special Rapporteur on extrajudicial, summary or arbitrary executions had drawn his attention to the problem of so-called "honour killings" where husbands, fathers or brothers had gone unpunished after having murdered their wives, daughters or sisters in order to defend the honour of the family. It was also reported that those who commit "honour killings" normally receive considerably shorter sentences, as the court view defence of the honour of the family as a mitigating circumstance. The Special Rapporteur expressed his concern and informed the Commission that he would continue to work with the Special Rapporteur on extrajudicial, summary or arbitrary executions to study this phenomenon (see E/CN.4/1999/60, paras. 41 and 42).

28. In this connection, the Special Rapporteur has been informed that during the period covered by this report, the Special Rapporteur on extrajudicial, summary or arbitrary executions sent three communications, two to Pakistan and one to Bangladesh, involving cases relating to the problem of "honour killings". The cases are described in the relevant report. The Special Rapporteur wishes to express his concern in regard to these cases of summary execution, and urges the Governments concerned to bring those responsible to justice. Further, the Special Rapporteur reminds the Governments of their responsibility under international law to prevent, to investigate and to punish human rights violations.

B. Judicial corruption

29. Considerable concerns are beginning to be expressed over judicial corruption. The issue was on the agenda of the ninth International Anti-Corruption Conference organized by Transparency International in South Africa in October 1999 which the Special Rapporteur attended. Transparency International is pursuing its activities to curb corruption within the judiciary. It intends to work closely on this matter with the United Nations Centre for Crime Prevention and Criminal Justice, the United Nations Development Programme, the International Commission of Jurists, the Commonwealth Secretariat and the various international financial institutions, including the World Bank and the Asian Development Bank. In this regard the Centre for the Independence of Judges and Lawyers, in cooperation with Transparency International, is convening a workshop of experts on combating judicial corruption from 23 to 25 February 2000 in Geneva.

30. The Special Rapporteur welcomes these initiatives and looks forward to close cooperation with the organizations concerned.

C. Human rights defenders

31. The Special Rapporteur continues to receive complaints of attacks against human rights defenders who are not lawyers or who are lawyers but attack other than in the course of the discharge of their professional duties in defence of human rights. Owing to the need to confine himself within the parameters of his mandate, the Special Rapporteur may not intervene in

defence of human rights defenders, however serious the attacks against them. The situation becomes embarrassing when several are attacked collectively but only some of them are lawyers attacked while exercising their professional duties.

32. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms will be meaningless if there is no effective monitoring mechanism to oversee its implementation.

V. STANDARDS

International Association of Prosecutors

33. On 23 April 1999 the International Association of Prosecutors adopted a set of Standards of Professional Responsibility and a Statement of the Essential Duties and Rights of Prosecutors. Based on the United Nations Guidelines on the Role of Prosecutors, these standards deal with the professional conduct, independence and impartiality of prosecutors as well as their duty to cooperate with colleagues around the world and their right to fair and proper terms of employment. Provisions deal with the proper conduct of criminal proceedings, including measures which will ensure the fair prosecution of offences while protecting a defendant's right to a fair trial.

Council of Europe

34. In his last report (E/CN.4/1999/60, para. 46), the Special Rapporteur referred to Council of Europe Recommendation No. R (94) 12 on the independence, efficiency and role of judges adopted by the Committee of Ministers on 13 October 1994. The European Charter on the Statute for Judges was adopted in July 1998 and in April 1999, representatives from Ministries of Justice of 25 European countries met in Lisbon and approved the flexible and open nature of the modalities laid down in the European Charter and, having examined the problems which confront them in their own countries, confirmed the usefulness of the Charter and called for its greater dissemination and translation into as many languages as possible.

35. The Special Rapporteur, while continuing to express his appreciation to regional and international associations, both intergovernmental and non-governmental, for their concern to set standards to promote and protect the independence of the judiciary, he remains concerned over the proliferation of standards. The Special Rapporteur would rather see greater efforts made towards the implementation of current standards.

VI. JUDICIAL DECISIONS REFLECTING THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY

36. In his last report (E/CN.4/1999/60, para. 50 (b)) the Special Rapporteur drew the attention of the Commission to a decision of the Norwegian Supreme Court in the case of Jens Vikter Plabte v. The State, 1997, in which the Court held that temporary judges did not have the requisite security of tenure to ensure their independence and impartiality. The Special Rapporteur is pleased to note that the Court of Appeal of the High Court of Judiciary of Scotland

delivered a similar decision on 11 November 1999 to the effect that temporary sheriffs (magistrates) who are appointed by the Secretary of State (but in essence by the Lord Advocate, who is part of the Executive) and subject to recall by him at any time did not have the requisite security of tenure and were therefore inconsistent with judicial independence. The Special Rapporteur finds the following paragraph in the Court's judgement very pertinent vis-à-vis the importance of the judiciary being independent of the Executive.

> "The Solicitor-General emphasized that it is inconceivable that the Lord Advocate would interfere with the performance of judicial functions. I readily accept that, but that is not the point. Judicial independence can be threatened not only by interference by the Executive, but also by a judge's being influenced, consciously or unconsciously, by his hopes and fears as to his possible treatment by the Executive. It is for that reason that a judge must not be dependent on the Executive, however well the Executive may behave; 'independence' connotes the absence of dependence. It also has to be borne in mind that judicial independence exists to protect the integrity of the judiciary and confidence in the administration of justice, and thus society as a whole, in bad times as well as good. The adequacy of judicial independence cannot appropriately be tested on the assumption that the Executive will always behave with appropriate restraint; as the European Court of Human Rights has emphasized in its interpretation of article 6, it is important that there be 'guarantees' against outside pressures. In short, for the judiciary to be dependent on the Executive flies in the face of the principle of the separation of powers which is central to the requirement of the judicial independence in article 6." (See Starrs and Chalmers v. Procurator Fiscal (PF Linlithgow) appeal No. 2570/99.)

37. The Special Rapporteur has been informed that the Lord Advocate has decided not to appeal the decision of the Court of Appeal to the Privy Council. He has also been informed of the ramifications of this decision on the large number of judicial appointments of a part-time nature in the United Kingdom. The Special Rapporteur will continue to monitor developments.

VII. SITUATIONS IN SPECIFIC COUNTRIES OR TERRITORIES

38. This chapter contains brief summaries of the urgent appeals and communications transmitted to governmental authorities between 11 December 1998 and 30 November 1999, as well as of replies to the allegations received between 6 January 1999 and 24 December 1999. In addition, the Special Rapporteur takes note in this chapter of the activities of other mechanisms which are related to his mandate. Where he has deemed it necessary, the Special Rapporteur has included his own observations. He wishes to emphasize that the appeals and communications reflected in this chapter are based exclusively upon information that has been transmitted to him directly. Where information was insufficient, the Special Rapporteur was not in a position to act. He also recognizes that problems concerning the independence and impartiality of the judiciary are not confined to the countries and territories mentioned in this chapter. In this regard, he wishes to emphasize that readers of the present report should not interpret the omission of a particular country or territory from this chapter as indicating that the Special Rapporteur considers that there are no problems with the judiciary in that country or territory.

39. In preparing this report, the Special Rapporteur has taken took note of the reports submitted to the Commission by the country special rapporteurs/representatives and independent experts.

Argentina

Communication to the Government

40. On 5 July 1999, the Special Rapporteur sent a follow-up to his urgent appeal dated 26 August 1998 concerning the case of Federal Judge Roberto Marquevich. According to the information provided to the Special Reporter, Judge Marquevich and his family have been subjected to death threats (see E/CN 4/1999/60, para. 54).

Communication from the Government

41. On 13 October 1999, the Government replied to the letter of 5 July 1999 regarding the situation of Judge Marquevich. The Government informed the Special Rapporteur that Federal Judge Roberto Marquevich had entered a complaint with Criminal and Correctional Federal Tribunal No. 2 of San Isidro concerning threats he had received. The Tribunal opened file No. 1055 on his case. Judge Marquevich presented a letter containing the threats, signed by the Autonomous Anti-Subversive Command General Cesáreo Cardozo, which was sent to a laboratory for analysis; however, no results have been made available yet. By the time of the filing of the complaint, the former Director of the San Isidro police had offered to increase the number of Judge Marquevich's security guards, but Judge Marquevich indicated that it was not necessary at that time. Currently, 10 police officers are assigned to protection duties. A police officer has also been assigned to watch Judge Marquevich's house.

Observation

42. The Special Rapporteur thanks the Government for its reply and is pleased to learn of the measures taken to guarantee the security of Judge Marquevich.

Australia

Communications to the Government

43. On 14 December 1998, the Special Rapporteur sent an urgent appeal to the Government concerning the case of Mr. Shek Elmi, a Somali national seeking asylum in Australia who was at risk of being deported to his homeland where it was alleged he was at risk of being subjected to torture or extrajudicial execution. It was reported that the applicant was transferred on 21 November from the Immigration Detention Centre (IDC) at Marybyrnong in Melbourne to the Immigration Detention Centre located at Port Hedland in Western Australia. It was further reported that (a) the applicant had entered Australia at Tullamarine Airport in Melbourne and had no connection with Western Australia; (b) as of 21 November 1998, the applicant had been detained for almost 12 months at the Melbourne IDC; (c) all of the applicant's legal representatives are located in Melbourne and are acting pro bono for the applicant because he is impecunious; (d) the applicant's impecunious state means that his access to telephone facilities at

the Port Hedland IDC is restricted because of the significant cost of telephone calls from there to Melbourne; (e) the remote location of the Port Hedland IDC means that it is prohibitively expensive for the applicant's legal representatives to visit him when they are acting pro bono.

Communication from the Government

44. On 21 January 1999, the Government sent a letter in reply to the letter concerning the case of Mr. Shek Elmi. The Government informed the Special Rapporteur that Mr. Shek Elmi was returned to the Maribyrnong IDC in Melbourne on 8 January. Mr. Elmi had accepted the offers by the Department of Immigration and Multicultural Affairs to provide him with free telephone calls for the purpose of contacting his legal representatives, and to ensure that any documents he wished to send to his legal representatives would be sent immediately and unopened by the Department.

Observation

45. The Special Rapporteur thanks the Government for its response. There have been no further complaints on this matter.

Bahrain

Communication to the Government

46. On 6 July 1999 the Special Rapporteur sent a joint urgent appeal with the Working Group on Arbitrary Detention and the Special Rapporteur on freedom of opinion and expression in regard to the situation of Mr. Shaikh Al-Jamri, a 62-year-old religious scholar and poet and former member of the now defunct National Assembly. According to the information received, Mr. Al-Jamri, who had been in prison without a trial for nearly 3½ years for his opposition activities, was scheduled to have a court hearing on 6 July 1999.

47. Mr. Al-Jamri was arrested in January 1996, along with seven other prominent Shi'a Muslim clerics, apparently in connection with a petition he had circulated calling for constitutional change. On 21 February 1999 he was finally brought before the State Security Court in Jaw, some 18 miles south of the capital, Manama. It was alleged that the judge was a relative of the ruling Al-Khalifa family. No international observers were allowed to attend and the session was held in camera. Mr. Al-Jamri was allowed access to a lawyer only one hour before the session began. He was reportedly charged with responsibility for all the public disorder and acts of sabotage in Bahrain since December 1994, despite the fact that he had never advocated violence and had actually been imprisoned for most of the period. Mr. Al-Jamri pleaded not guilty.

48. On 7 July 1999, the Special Rapporteur learned that Mr. Al-Jamri was sentenced to 10 years in jail by a three-judge panel in Jaw for spying and inciting unrest against the royal family and ordered to pay a fine of 5.7 million dinars (US$ 1.52 million). Mr. Al-Jamri was widely expected to be released as part of a wider amnesty of political and common criminals by Bahrain's ruler, Sheik Hamad ibn Isa al Khalifa. Subsequently, the Special Rapporteur learned

that on 8 July 1999, Mr. Al-Jamri was released and returned to his village of Bani-Jamra. It has been reported that he is now in his house with police officers on guard outside, and his village has been sealed off.

Observations

49. While expressing his appreciation for Mr. Al-Jamri's release, the Special Rapporteur is nevertheless concerned at the lack of independence of the tribunal which tried and convicted him.

Belarus

Communication to the Government

50. On 8 January 1999, the Special Rapporteur sent an urgent appeal concerning further information he had received regarding the case of Ms. Vera Stremkovskaya. According to the source, Ms. Stremkovskaya had been summoned to further meetings with Belarus officials, including the Chief Justice of the Supreme Court, the Chairman of the Belarus Collegium of Advocates and the Director of the Justice Department. It was alleged that each official had accused her of spreading "false" information about the Government, berated her for seeking intervention by international human rights groups, and again threatened her with disbarment. It was further alleged that she had been warned that she must choose between her support for human rights and the practice of law.

51. Moreover, the Special Rapporteur was informed that the harassment of Ms. Stremkovskaya was not an isolated case, but rather a reflection of systematic government interference with the independence and impartiality of judges and lawyers in Belarus. According to the source, the Collegium of Advocates regulates and controls all aspects of the practice of law in Belarus. Under Presidential Decree 12, the Collegium, which is controlled by the Ministry of Justice, alone allocates legal work and remuneration to lawyers.

52. On 5 March 1999, the Special Rapporteur sent an urgent appeal concerning the detention of Viktar Hanchar, Chairman of the democratically elected Central Electoral Commission of Belarus. According to the source, Viktar Hanchar was arrested along with 13 others on 1 March 1999 and charged with organizing an unlawful meeting. It was further reported that Viktar Hanchar was treated roughly by the police when he was detained and that he suffered injuries, as well as the breaking of his car window. It was alleged that he was denied access to his lawyers and that he was tried in closed court proceeding. It has been reported that he had not received a copy of the court's ruling against him. In protest against his treatment, Mr. Hanchar announced he would go on hunger strike.

53. On 11 October 1999, following the recommendations made by the Chairman of the fifty-first session of the Sub-Commission on the Promotion and Protection of Human Rights, the Special Rapporteur sent a letter to the Government requesting an invitation to visit the country in order to study the situation of the independence of the judiciary and lawyers.

Communication from the Government

54. On 12 February 1999, the Government sent a note verbale to the Special Rapporteur in reply to his urgent appeal concerning Ms. Vera Stremkovskaya. The Government informed the Special Rapporteur that article 13 of the Law on Lawyers provides for lawyer-client confidentiality and article 3.3 of the Rules of Professional Ethics of Lawyers in Belarus provides that a lawyer cannot disseminate information that is considered to be confidential under the lawyer-client privilege. Ms. Stremkovskaya had violated the rules of professional ethics by disclosing to the mass media information concerning the investigation of a criminal case which became known to her through her professional work. On 27 October 1998, the Presidium of the Minsk Bar Association, after examining the case of Ms. Stremkovskaya, addressed a warning note to her calling on her to refrain from such conduct in the future. The disciplinary measures against Ms. Stremkovskaya adopted by the Minister of Justice were based on the recommendations made by the Bar and the "Qualifying Commissions" which are composed of judges and representatives of the Minister of Justice. The measures were not related to Ms. Stremkovskaya's presentation in New York at the International League of Human Rights as was alleged.

55. The Government has yet to respond to the Special Rapporteur's communication of 5 March 1999 with regard to the case of Viktar Hanchar.

56. On 29 November 1999, the Permanent Mission of Belarus sent a letter to the Special Rapporteur in response to his letter of 11 October 1999 requesting an invitation to undertake a visit. The Deputy Permanent Representative informed the Special Rapporteur that in accordance with the recommendations made by the Chairman of the fifty-first session of the Sub-Commission, the Government of the Republic of Belarus was ready to invite the Special Rapporteur to visit Minsk in June 2000.

Belgium

57. At the fifty-fourth session of the Commission on Human Rights the Special Rapporteur presented an interim report of his fact-finding mission to Belgium in October 1997 (E/CN.4/1998/39/Add.3). The Special Rapporteur noted in that report that the impetus for seeking that mission had been the massive public demonstrations held in Brussels following the dismissal of a magistrate (juge d'instruction) investigating a case of child prostitution, kidnapping and murder. The removal of the judge gave rise to a perception that the system by which magistrates and judges were appointed, promoted and dismissed was motivated by political and/or partisan interests. As a result of the public outcry concerning this case, the Government took immediate steps to reform the entire judicial system, including a proposal to revise article 151 of the Constitution providing for the appointment of justices of the peace and judges of the Police Tribunal and the Tribunals of First Instance by the King.

58. At the time of the Special Rapporteur's visit the key reforms had not yet been presented to the Parliament, in particular the revision of article 151 of the Constitution. Following his visit, the revision was debated in Parliament and after further revisions the amendment was adopted, the revision to article 151 was published in the Official Gazette on 20 November 1998.

59. The Special Rapporteur undertook a short follow-up mission to Belgium from 24 to 26 November 1998 but was able to submit only an oral report to the fifty-fifth session of the Commission. As the Special Rapporteur has already dealt with the facts leading to the massive demonstrations of 1996 and expressed his findings, he will now confine himself to the judicial reforms, and in particular to the amendment to article 151 of the Constitution.

60. Article 151 of the Constitution was amended to provide for a Superior Council of the Magistracy composed of a French-speaking college and a Dutch-speaking college in equal proportion of the 44 members. Twenty-two would be magistrates elected from within the judiciary and the other 22 per cent elected by the Senate by a two-thirds majority. They would be jurists, for example retired magistrates, practising lawyers or legal academics. The Council makes recommendations for the appointment of magistrates and evaluates their performance and has the power to impose penalties, including withholding of salary, for unsatisfactory performance.

61. The Council makes its recommendations to the Minister of Justice, who has the power of veto. When such power is exercised the Minister has to give his reasons in writing. The Council, however, can renominate the same candidate for appointment, in which event the Minister is obliged to accept. The Government justified this power of veto as part of its political responsibility and accountability for judicial appointments to the Parliament. All appointments are made by the King on the advice of the Minister of Justice.

62. The Council also makes recommendations to the King concerning the appointment of the First Presidents of the Courts of Appeal and the Court of Cessation for a non-renewable period of seven years. Previously, the Presidents were elected by the magistrates of the respective courts.

63. The Government was then considering a suitable mechanism for disciplining judges. In the prevailing system discipline was left to the judiciary itself, which was felt to be very satisfactory.

64. The judiciary had no centralized records or statistics of the number of complaints received or the actions taken in disciplining magistrates.

Observations

65. The Special Rapporteur views the establishment of the Superior Council of the Magistracy for the appointment of judges as a step in the right direction.

66. The Government's original proposal to have a larger number of Senate-appointed members in the Council was of some concern to the Special Rapporteur. He told the Government that the judiciary itself should have a greater say in the appointment of its magistrates; the composition of the Council should at least be balanced, with an equal number appointed by the Senate and by the judiciary. Such a mechanism would be in accordance with principles 10 and 13 of the United Nations Basic Principles on the Independence of the Judiciary, though the veto power reserved for the Minister of Justice is inimical to the concept of an independent mechanism. As the Senate appoints 50 per cent of the members of the Council,

the Special Rapporteur fails to see the rationale of the argument that the Government needs to retain a supervisory role because of its responsibility and accountability to Parliament.

67. The Special Rapporteur also refers the Government to the European Charter on the Status of Judges, and in particular paragraphs 2 and 3 regarding Selection, Recruitment, Initial Training, Appointment and Irrevocability.

68. At the time of submission of this report the Special Rapporteur had not been informed of the status of the reform of the disciplinary procedure. During his mission the Special Rapporteur expressed to the President of the Parliamentary Commission on judicial reform the importance of ensuring that the composition of the mechanism was left to sitting magistrates, and that it have at least 50 per cent participation of such magistrates. While Parliament could be the forum that ultimately decides an impeachment procedure, the initial investigations and inquiries, with guarantees of due process, and recommendations or sanctions must be left to sitting magistrates. In this regard, the Special Rapporteur refers to principles 17 to 20 of the Basic Principles on the Independence of the Judiciary and paragraph 5 of the European Charter on the Statute for Judges.

69. In conclusion, the Special Rapporteur thanks the Government of Belgium for the cooperation it extended throughout.

Belize

70. In his last report (E/CN.4/1999/60, paras. 60-61) the Special Rapporteur expressed concern over certain measures the Government was then considering to rescind the appointment of the Chief Justice, Manuel Sosa. The Government had not then responded to the 18 October 1998 communication of the Special Rapporteur in that regard. In his oral statement to the Commission the Special Rapporteur expressed grave concern that the Chief Justice had indeed been removed by a court order in February 1999.

71. Subsequently, the Government of Belize communicated with the Special Rapporteur through its High Commissioner in London. The Special Rapporteur, while in London on two occasions, met with the High Commissioner.

72. The High Commissioner explained that the Government had not received the 18 October communication but did receive the subsequent reminder. The Government made available to the Special Rapporteur all relevant correspondence, court judgements and orders on this matter. From these materials the Special Rapporteur ascertained the following.

73. Mr. Manuel Sosa was appointed Chief Justice of Belize on 24 August 1998 for a period of three years. He had been a judge of the Supreme Court. On 16 February 1999 an application was filed in the Supreme Court to determine whether Justice Sosa's appointment was valid pursuant to sections 97 (1) and 129 (2) of the Constitution. The Attorney-General was the Respondent to this suit. The Chief Justice was neither a party to the suit nor was notified of it. The application was heard by the Supreme Court on 18 February 1999, which found that the appointment was unconstitutional and therefore null and void. The Court ordered that Justice Sosa be prohibited from continuing to act as Chief Justice.

74. Section 97 (1) of the Constitution of Belize provides: "The Chief Justice shall be appointed by the Governor-General acting in accordance with the advice of the Prime Minister given after consultation with the Leader of the Opposition" (emphasis added). Section 129 (2) of the Constitution defines "consultation" as "where any person or authority, or any other law to consult any other person or authority before taking any decision or action, that other person or authority must be given a genuine opportunity to present his or its views before the decision or action, as the case may be, is taken" (emphasis added).

75. The Court found that there had been no genuine consultation with the leader of the opposition before the appointment. The Special Rapporteur, having examined the various materials, including the grounds of judgement of the Court, cannot find any fault with the Court's finding. However, the Special Rapporteur expressed concern over the failure to notify the Chief Justice of the proceedings, thereby depriving him of the opportunity to defend the appointment, which amounted to denial of due process. Further, the swift manner in which the suit was filed, heard and the order made, all within two days, and the fact that Justice Sosa was asked by policemen to remove his personal belongings from his chambers and leave, left little to be said for justice for judges.

76. Justice Manuel Sosa appealed to the Court of Appeal. However, the matter was amicably resolved by the Government appointing him to the Court of Appeal in consideration of Justice Sosa having withdrawn his appeal.

Bolivia

Communication to the Government

77. On 5 July 1999, the Special Rapporteur sent a follow-up letter to the Government requesting updated information concerning the case of lawyer Waldo Albarrain.

Observation

78. The Special Rapporteur awaits a response from the Government to this communication.

Bosnia and Herzegovina

79. In his report to the General Assembly (A/54/396, paras. 23-25), the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) reported that there was a need for some type of "quality control" of judicial officials in Bosnia and Herzegovina. Unlike police, judges and prosecutors had never undergone a recertification process after the war. The appointment procedures for new judicial officials were often motivated by political considerations. Many qualified professionals had left the country during the war, and substantial numbers of judicial personnel were either incompetent or inadequately trained, and corruption and political influence tainted the judicial system. Additionally, there was a lack of judges and other personnel, partly because of low salaries or non-payment and delays in the payment of salaries. It was contended that the infrastructure of the judicial system remained inadequate.

80. The Human Rights Chamber had raised some concerns about the judiciary in a decision on judicial appointment procedures, access to the courts and discrimination against minorities. The case, DM v. Federation of BiH, involved a Bosniak applicant who in 1993 had been evicted from her property in Croat-administered Livno by a Croat police officer. Since her return to Livno in 1997 she had unsuccessfully tried to obtain a court decision awarding her repossession of her property. The Chamber found that the judicial appointment process in canton 10, where only members or supporters of the ruling Croat nationalist party had been appointed, prevented minorities from filing claims with the courts. The Chamber ordered the Federation to take immediate steps to reinstate the applicant into her house, and to pay damages. The decision also addressed fair trial issues. The Chamber confirmed a pattern of discrimination against Bosniaks and found that the applicant's rights to a fair hearing and an effective remedy before the courts had been violated.

81. Another case which had raised concerns in regard to the right to fair trial was proceedings against the so-called Zvornik 7 in the Republika Srpska. On 12 December 1998, the Bijeljina (Republika Srpska) District Court sentenced three Bosniaks to lengthy prison terms for the murders of four Serb woodcutters in the beginning of May 1996. Following an appeal, the Republika Srpska Supreme Court set aside the verdict and ordered a retrial, based on irregularities in the reasoning of the first instance court. International observers had expressed disappointment with the Court's reasoning, as evidence of the use of coerced confessions and the denial of the right to effective assistance of counsel, among other violations of due process, were not mentioned in the decision.

Observation

82. The Special Rapporteur views the current situation of the judiciary with serious concern and will liaise with the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro).

Brazil

Communication to the Government

83. On 22 April 1999, the Special Rapporteur sent a letter concerning the case of human rights lawyers Roberto Monte and João Marques who have allegedly received death threats. It was reported that both lawyers were witnesses in the official investigation into the 1996 murder of human rights lawyer Francisco Gilson Nogueira and that they received death threats following the killing of another witness, human rights lawyer Antônio Lopes. Mr. Lopes was allegedly killed by a death squad believed to have links to the State authorities.

84. On 5 July 1999, the Special Rapporteur sent a follow-up letter to the Government requesting updated information regarding the cases of Mrs. Edna Flor and Mr. Donizetti Flor, lawyers of the Centro de Defensa dos Direitos Humanos Antoñio Porfirio dos Santos, in Aracatuba, São Pãolo State.

85. In 30 August 1999, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the case of alleged death threats against lawyer Valdecir Nicasio Lima allegedly in connection with a report he issued on the criminal activities of a federal congressman from Acre who has reportedly been linked to a death squad operating in the State. It has been reported that at the beginning of August 1999 Mr. Lima spoke about the investigations in an interview broadcast on a national TV show. According to the information received, during the interview four armed men went to the house of one of his friends and said they were going to shoot Valdecir. Furthermore, according to the source, Mr. Lima had been told by the police that his safety could not be guaranteed in the State.

86. On 16 November 1999, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent an urgent appeal concerning the situation of lawyer Joilce Gomes Santana, a human rights defender in Natal, state capital of Rio Grande do Norte. According to information received, since March 1999 Ms. Santana has been repeatedly threatened. She has received no State protection despite repeated requests from national and international human rights organizations. Moreover, it was alleged that in September 1999, a federal police investigator in charge of her file voiced concern for her security. In September 1999, an employee hired recently by Ms. Santana left the office with cheques, office equipment and some cash. On 20 October 1999, Ms Santana contacted the former employee who stated that she had been forced to commit the thefts in order to scare Ms. Santana. Ms. Santana filed a case on 21 October with the Superintendent of the Rio Grande do Norte Federal Police regarding her concern that both her personal and professional security were threatened.

87. It has been reported that Ms. Joilce Gomes Santana handles sensitive files, like those of Mr. G. Lopes and Mr. A. Lopes who were killed by the Federal Police. She defends prisoners who have been victims of torture and other ill-treatment and publicly denounces violations of human rights in Rio Grande do Norte.

Communication from the Government

88. The Permanent Mission acknowledged receipt of the letters of the Special Rapporteur dated 22 April, 5 July and 30 August 1999.

Observation

89. The Special Rapporteur is awaiting a response from the Government to his communications.

Cambodia

Report of the Special Representative of the Secretary-General on the situation of human rights in Cambodia

90. In his report to the General Assembly, the Special Representative of the Secretary-General on the situation of human rights in Cambodia (A/54/353, paras. 63-69)

welcomed the work being undertaken by the Ministry of Justice on the draft Code of Criminal Procedure, the draft Statute of Magistrates and the Statute on Court Clerks. He noted, however, that the Supreme Council of the Magistracy had been convened only once since it was established in 1994. The salaries of judges and prosecutors, together with those of court clerks, had been slightly increased by government decision. However a further increase in the salaries of judges and prosecutors was necessary to provide the basic minimum necessary to sustain a reasonable standard of living.

91. The Special Representative has reported that lack of cooperation from and cases of actual interference with court activities by various authorities still persists. The Special Representative is concerned about the confusion in interpretation of the respective jurisdiction of civilian and military courts. Under Cambodian law, only current military personnel who commit offences against military discipline or property may be tried by the Military Tribunal. Of equal concern to the Special Representative is a case of abuse of power by a court official at Sihanoukville Municipal Court.

Observation

92. The Special Rapporteur will continue to monitor the transition process, in particular with regard to the independence of the judiciary.

Cameroon

Communication to the Government

93. On 26 October 1999, the Special Rapporteur sent a joint urgent appeal together with the Chairman-Rapporteur of the Working Group on Arbitrary Detention concerning the trial of three individuals sentenced to life imprisonment, Mr. Edwin Jumbien, Mr. Hassan Jumban and Mr. Simon Ngekqwei, and 30 others sentenced to prison terms of up to 20 years by a military tribunal in Yaoundé. Some 40 other defendants were acquitted. According to the information received, most of the defendants were held for more than two years in custody before being brought before the military tribunal, where they were charged on 14 April 1999. The trial began on 25 May 1999, with further hearings being conducted over the following months before the verdict was pronounced on 6 October 1999. Defence lawyers have said that appeals against conviction and sentence will be lodged with the Court of Appeal in Yaoundé.

94. It was reported that the defendants had no access to defence counsel throughout the period of their pre-trial detention, and that even after the start of the trial they had little opportunity to communicate with their lawyers. It was also reported that they had no access to the indictment against them and thus were unable to prepare their defence adequately or to challenge the charges against them. Some 70 defendants were allegedly represented by 12 lawyers. Prosecution witnesses, namely members of the security forces who had conducted preliminary investigations, claimed that the defendants had confessed their guilt. Some defendants, however, testified that they had been tortured and ill-treated during interrogation, and had confessed under duress.

95. Those convicted, all civilians from Cameroon's English-speaking minority, were charged with offences, including murder, attempted murder, grievous bodily harm, attempted destruction, illegal possession of firearms, arson and robbery, in connection with armed attacks in North-West Province in March 1997 during which 10 people, including three police officers, reportedly were killed.

96. The authorities apparently blamed the attacks on the Southern Cameroon's National Council (SCNC), which supports independence for Cameroon's two English-speaking provinces, North-West and South-West Provinces, and the affiliated Southern Cameroon's Youth League (SCYL). Although prosecution witnesses said that written materials were seized, proving that members of the SCNC and the SCYL had planned and coordinated the attacks in North-West Province, no such documents or other evidence are reported to have been produced in court.

97. A law passed in April 1998 in Cameroon is said to have extended the jurisdiction of military tribunals to offences involving firearms. The military court which tried the above cases is said to operate under the authority of the Minister of Defence, and the prosecution is said to be under the authority of the Minister of State in charge of Defence. It is therefore feared that the defendants were tried by the armed forces, which had also detained and charged them.

Observation

98. The Special Rapporteur is awaiting a reply from the Government.

Chile

Communication to the Government

99. On 21 May 1999, the Special Rapporteur sent a letter to the Government concerning the case of indigenous lawyer, José Lindoqueo, who was arrested on 6 May 1999. According to the information received, Mr. Lindoqueo was arrested in connection with his work as legal adviser to the Mapuches indigenous people, in a dispute with companies in the Arauco and Malleco regions of Chile. It was reported that after several incidents between Mapuches and the companies, a judge ordered 18 people, including Mr. Lindoqueo, detained. It was later reported to the Special Rapporteur that on 9 May 1999 a petition of habeas corpus was filed on behalf of Mr. Lindoqueo and he was released on 13 May 1999. However, Mr. Lindoqueo was deprived of his liberty for a period of seven days.

Observation

100. The Special Rapporteur is awaiting a response from the Government to his communication.

China

Communications to the Government

101. On 14 December 1998, the Special Rapporteur sent a communication to the Government of China concerning allegations he received concerning Mr. Li Bifeng, who was reportedly sentenced to seven years' imprisonment by the Mianyang People's Court in Sichuan on a charge of fraud following his reports on the grievance of laid-off workers to foreign organizations and his criticism of the Communist Party in a letter to it. It is reported that the trial of Li Bifeng lasted only one day. No witnesses appeared to testify against or on behalf of the defendant and the only piece of evidence was an IOU slip that supposedly linked Li Bifeng to an embezzlement scheme. Further, it is alleged that prior to the trial, Li Bifeng's lawyer had been threatened by the police and warned that the case was complicated and that he should not offer a strong defence on his client's behalf.

102. On 31 May 1999, the Special Rapporteur sent a communication concerning developments arising from the two decisions of the Court of Final Appeal of the Hong Kong Special Administrative Region (HKSAR) handed down on 29 January 1999. These decisions, inter alia, enabled children of Chinese nationality who were born outside Hong Kong, one of whose parents is a HKSAR permanent resident to qualify as a HKSAR permanent resident, such qualification was not related to the status of the parents at the time of birth or whether the child was born within or outside marriage. The Special Rapporteur was further informed that attempts were made to oust the execution of these decisions, including a request to the National People's Congress to interpret the Basic Law.

103. On 22 November 1999, the Special Rapporteur sent a communication concerning information he had received relating to the situation of the practitioners of Falun Gong. According to the information received, following the Government's ban upon the spiritual practice on 22 July 1999, the Beijing Bureau of Justice issued on 29 July a notice setting out a procedure for reporting all requests for consultations and legal representation relating to Falun Gong. The notice required all legal units, including all attorneys' offices and Bureaux of Justice in all counties and districts, to immediately report, tally and record all requests for consultations and legal representation relating to Falun Gong. The notice stipulated that no contract for legal representation was to be signed without prior approval from the Office of Legal Administration.

104. Furthermore, it has been alleged that Falun Gong followers have been sentenced without trial or notification to their relatives, including Li Zhiling, Tian Xiuhua, Sui Dali, Chang Yu, Zhang Jiezi and Zhou Ximeng, who have been sentenced to between one and three years in a labour camp. It is further reported that several Falun Gong followers will be facing proceedings.

Communication from the Government

105. On 24 June 1999, the Government sent a letter in reply to the Special Rapporteur's letter of 14 December 1998 concerning the case of Mr. Li Bifeng. The Government informed the Special Rapporteur that Li Bifeng had been arrested for economic crimes in April 1998. The Mianyang People's Court held a public hearing during which the results of the investigation in

the case of Li Bifeng were presented. Li Bifeng was a sales representative for a factory in September 1996. In that capacity, he had sold many of the sample products of the company without reporting the earnings to the company, for an amount of approximately US$ 10,000. In November 1996, Li Bifeng sold products of the factory for a similar amount, again without reporting his earnings to the factory. During the public hearing, several witnesses from the factory had provided testimony in this regard. Li Bifeng had admitted his wrongdoing. The Mianyang People's Court considered that Li Bifeng should be punished severely for his repeated illegal actions in view of the provisions of the Criminal Code, particularly articles 12, 65 and 266. Consequently, Li Bifeng was sentenced to seven years' imprisonment and a fine of 2,000 [local currency] on 24 August 1998. During the hearing, Li Bifeng was assisted by a lawyer. Li Bifeng did not appeal the judicial decision. The Government indicated that the right to defence is guaranteed by Chinese law. Further, Li Bifeng was not sentenced as a result of his alleged activities as a dissident, but for his illegal activities. The judiciary had consequently rendered a judgement based on the facts, including the testimony provided by the witnesses, and the law.

106. On 15 September 1999, the Government sent a letter to the Special Rapporteur in reply to his letter dated 31 May 1999 concerning developments arising from the two decisions of the Court of Final Appeal of the HKSAR of 29 January 1999. The Government informed the Special Rapporteur that the independence of the judiciary and the rule of law remain intact in the HKSAR. The two judgements of the court dealt specifically with article 22 (4) and article 24 (3) of the Basic Law relating to the entry into Hong Kong of people from other parts of China and the permanent resident status of Chinese nationals born outside the HKSAR, respectively. The judgements conferred the right of abode, or permanent resident status, on persons who previously did not have that right in Hong Kong, i.e. persons born outside Hong Kong whose parents were not HKSAR permanent residents at the time of the person's birth but either or both of whom subsequently became HKSAR residents, and persons born out of wedlock and outside Hong Kong whose father was a HKSAR permanent resident while the mother was not. The court also held that mainland residents who had the right of abode in Hong Kong were not bound by the existing requirement to obtain approval from the central government authorities to settle in Hong Kong.

107. In the view of the HKSAR government, the court's interpretation of articles 22 (4) and 24 (2) (3) of the Basic Law might not accord with the true legislative intent of these provisions. The HKSAR government holds the view that the true legislative intent is reflected in the documents relating to these Basic Law provisions and the drafting history of the immigration laws.

108. The HKSAR government estimated that by reason of the court's interpretation, the right of abode was extended immediately to some 690,000 mainland residents and in due course (after a qualifying mainland parent had completed seven years' ordinary residence in Hong Kong) to their estimated 900,000 mainland-born children. The situation would be aggravated by the court's decision that these people were not subject to the requirement that persons from the mainland obtain approval for settlement in Hong Kong in accordance with a quota system. It would therefore be extremely difficult to ensure their orderly entry. The socio-economic

consequences would be unmanageable, bearing in mind that the new settlers, if admitted, would amount to a population increase of some 24 per cent on top of the present 6.8 million living in a city with a land mass of only 1,100 square kilometres.

109. The HKSAR government has carefully considered all options which might provide a remedy, including seeking an amendment of the relevant provisions of the Basic Law and seeking an interpretation of these provisions. The powers to amend and to interpret the Basic Law are set out in articles 159 and 158 of the Basic Law, respectively. Under article 159 (1), the power of amendment of the Basic Law is vested in the National People's Congress (NPC). Under article 158 (1), the power of interpretation of the Basic Law is vested in the NPC Standing Committee (NPCSC). Both amendment and interpretation are lawful and constitutional under the Basic Law.

110. The HKSAR government's decision to seek an NPCSC interpretation was based on the principle that there is a fundamental difference between an interpretation and an amendment. An interpretation is based on the true legislative intent of a provision; an amendment changes the legislative intent. In seeking an interpretation from the NPCSC, the HKSAR government only sought to clarify the true legislative intent of the relevant provisions of the Basic Law, and not to change the legislative intent. In this regard, it is important to note that the HKSAR government has not sought an interpretation in respect of the eligibility for right of abode of children born out of wedlock. This is because the existing legislation of both the mainland and the HKSAR have already given children born within and outside marriage equal status.

111. The interpretation made by the NPCSC on 26 June 1999 stated expressly that it does not affect the right of abode in the HKSAR which has been acquired under the judgement of 29 January 1999 of the Court of Final Appeal on the relevant cases. Accordingly, the status of about 3,700 mainland-born persons would be determined in accordance with the court's judgement, not the NPCSC's interpretation.

Observations

112. The Special Rapporteur thanks the Government for its responses to his communications of 14 December 1998 and 31 May 1999. He awaits the Government's reply to his communication of 22 November 1999.

113. With regard to the two controversial judgements of the Court of Final Appeal of January 1999, the Special Rapporteur has followed developments, particularly since his communications of 31 May 1999. On 26 February 1999, on a motion of the Director of Immigration, the Court took the unprecedented step of clarifying its judgements of 29 January 1999. The Court said that:

(a) Its judicial power is derived from the Basic Law;

(b) Article 158 (1) vests the power of interpretation of the Basic Law in the Standing Committee of the National People's Congress (NPCSC);

(c) The courts' jurisdiction to interpret the Basic Law in adjudicating cases is derived by authorization from the NPCSC;

(d) The 29 January judgements did not question the authority of the NPCSC to make an interpretation under article 158 of the Basic Law;

(e) The courts cannot question that authority.

114. On 26 June 1999, the Standing Committee of the Ninth National People's Congress interpreted the relevant articles of the Basic Law which had the effect of overturning substantial parts of the court's judgements of 29 January. However, it did not affect the immediate rights already acquired by litigant parties by virtue of the 29 January judgements.

115. Subsequently, on 25, 26 and 27 October 1999, the court heard an appeal, inter alia challenging the interpretation by the NPCSC. The court delivered its judgement on 3 December 1999, confirming that the NPCSC had the power to make the interpretation under article 158 (1), and that its interpretation was valid and binding and that the courts in the HKSAR were obliged to follow it.

116. The peculiar arrangement for the interpretation of certain provisions of the Basic Law, which the Chief Justice referred to as "excluded laws", being vested in the legislature as opposed to the courts was most aptly described in the judgement of Sir Anthony Mason, a former Chief Justice of Australia, who sat as a non-permanent member of the court. He said, inter alia:

> "The Basic Law is the Constitution of the Hong Kong Special Administrative Region of the Peoples' Republic of China established under the principle of 'one country, two systems'. It is a national law of the PRC, being an enactment of the National People's Congress made in the exercise of legislative powers conferred upon the NPC by the PRC Constitution.
>
> "Article 8 of the Basic Law preserves the common law in Hong Kong, Article 80 vests the judicial power in the courts of the Region and Article 81 maintains the judicial system previously practised in Hong Kong, except for changes consequent upon the establishment of the Court of the Final Appeal of the HKSAR. Article 81 is followed by Article 82 which vests the power of final adjudication in the Region in the Court of Final Appeal. By these and other provisions, the Basic Law maintains the common law and a common law judicial system in the Region. This conjunction of a common law system under national law within the larger framework of Chinese constitutional law is a fundamental aspect of the principle of 'one country, two systems' which is recited in the Preamble to the Basic Law.
>
> "As is the case with constitutional divisions of power, a link between the courts of the Region and the institutions of the People's Republic of China is required. In a nation-wide common law system the link would normally be between the regional courts and the national constitutional court or the national Supreme Court. Here, however, there are not only two different systems, but also two different legal systems. In the context of 'one country, two systems', Article 158 of the Basic Law provided a very different link.

> That is because the article, in conformity with Article 67 (4) of the PRC Constitution, vests the general power of interpretation of the Basic Law, not on the People's Supreme Court or the national courts, but in the NPC Standing Committee."

Sir Anthony went on to say, "this conclusion may seem strange to a common lawyer, but in my view it follows inevitably from a consideration of the text and structure of Article 158, viewed in the light of the context of the Basic Law and its character as the Constitution for the HKSAR embodied in a national law enacted by the PRC".

117. There is no doubt that the judicial power of the courts in the HKSAR is restricted with regard to the interpretation of the Basic Law. Judicial power, however, cannot be unlimited. Courts too are subject to the law so long as the law is rational and constitutional. The Court of Final Appeal has acknowledged this restriction on its judicial power. Though it may appear that the interpretation, in this case, by the Standing Committee had the effect of revising to some extent the 29 January 1999 judgements of the court, in violation of principle 4 of the Basic Principles of the Independence of the Judiciary, yet the peculiarity and the constitutional arrangements of the "one country, two systems" principle should be given due effect, as was done by the Court of Final Appeal, and the interpretation should not be viewed as an encroachment on the independence of that court. In any event, the interpretation of the Standing Committee did not overturn the rights of the litigating parties acquired by virtue of the two judgements.

Colombia

Communication to the Government

118. On 18 May 1999, the Special Rapporteur sent an urgent appeal to the Government regarding information he had received concerning proposed legislation providing for the continuance of the use of "faceless" judges and prosecutors and secret witnesses in terrorism, torture, drug trafficking and illicit enrichment-related criminal trials. The proposed Statutory Laws Nos. 144 and 145, which also provide for preventive detention without trial, describe the "faceless" judicial officers as district judges and district prosecutors, presumably to give the system a semblance of judicial propriety.

119. This proposed legislation appears to be inconsistent with the Government's assurances that it would abolish these exceptional procedures by 30 June 1999.

120. The Special Rapporteur was further informed that on 2 May 1999 the Office of the High Commissioner for Human Right in Colombia issued a statement that the proposed legislation was not fully in accordance with the international human rights treaties. He was also informed that the Minister of Justice, Mr. Parmenio Cuellar Bastides, resigned on 5 May 1999 expressing in his letter of resignation that while it was legitimate for the State to take appropriate security measures to enable magistrates to carry out their duties without fear or terror, such measures should not lead to or seem to lead to curtailment of procedural guarantees and universally accepted principles of due process.

121. On 22 July 1999, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the case of lawyer José Humberto Torres Díaz, a member of the Committee for Solidarity with Political Prisoners. According to the communication received, Mr. Torres Díaz had received death threats over the phone at his office and at his home. It was reported that on three occasions, unknown people had tried to enter his home by using the names of public companies, including the electricity company. Subsequently, Mr. Torres Díaz called these companies to learn that none of the companies had sent workers to his home. It was also reported that during a meeting held at the headquarters of the Second Brigade of the National Army in Barranquilla, Mr. Torres Díaz's name was mentioned as being the leader of one of the sections of the National Liberation Army. Some members of the Parliament attended this meeting. It was also reported that on 10 May 1999, as Mr. Torres Díaz was leaving Simón Bolívar University, where he was a professor, armed men were surrounding the area.

122. It has been reported that the Ministry of the Interior had given assurances that the security of Mr. Torres Díaz would be protected. However, for budgetary reasons, only two vehicles had been assigned to the task; it was alleged that this was insufficient.

Communications from the Government

123. On 23 August 1999, the Permanent Mission sent to the Special Rapporteur a note verbale in reply to his communication dated 19 April 1998 regarding the murder of lawyer Eduardo Umaña Mendoza (see E/CN.4/1999/60, para. 76). The Government informed the Special Rapporteur that the Attorney-General's Office had reported that the investigation into the murder was at the pre-trial examination stage and involved Teresa de Jesús Leal Medina, Fabio Mosquera Uribe, alias "El Mico", Regner Antonio Mosquera Velasco, Víctor Hugo Mejía Campusano and José Bernardo Hernández Ossa. In addition, warrants had been issued for the arrest of two other individuals suspected of involvement in the assassination.

124. On 2 September 1999, the Permanent Mission sent a note verbale to the Special Rapporteur in reply to his communication dated 17 July 1997 regarding the allegations of death threats against lawyer José Estanislao Amaya Páez (see E/CN.4/1998/39, para. 49). The Government informed the Special Rapporteur that the Prosecutor's Office had reported that a preliminary investigation was under way into the murder of Mr. Amaya Paéz on 16 December 1997; it had not so far been possible to establish the identity of or locate the perpetrators or accomplices in the crime.

125. On 30 July, 3, 15 and 22 September and 8 October, the Government sent letters to the Special Rapporteur providing information concerning the Government's advance in the field of human rights, particularly the document "Policy on the Promotion, Guarantee and Respect for Human Rights and the Application of International Humanitarian Law". On 5 August 1999, the Human Rights Ombudsman sent to the Special Rapporteur a copy of his sixth annual report for the year 1998.

Observations

126. The Special Rapporteur thanks the Government for its replies to his previous communications. The Special Rapporteur, however, is awaiting replies to his communications submitted during the course of the year.

Croatia

Communication to the Government

127. The Special Rapporteur took note of the report of the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) to the General Assembly, in which he considered that the continued judicial vacancies were a danger to the rule of law. Nearly all the branches of the judiciary had vacant positions: for example, as of October 1998, the Supreme Court and the Administrative Court, two branches of the judiciary that are crucial to the protection of human rights, had vacancy rates of over 30 and 35 per cent, respectively. The Korenica and Udbina civil courts were without judges from May 1998 until April 1999 while the Donji Lapac civil court had been without judges since 1995. Commendably, the Government has instituted an interim arrangement for existing judges to visit districts where there were shortages to relieve those courts of congestion, though this would not solve the problem of the large number of pending cases. All other courts in those communities were operational, a situation that enabled the Government to deliver justice in cases of crimes and misdemeanours while leaving citizens unable to resolve their civil disputes, such as those involving housing, effectively hindering the property-related aspects of the Return Programme.

Observations

128. The Special Rapporteur will continue to liaise with the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) concerning the independence of the judiciary and the legal profession in Croatia.

Cuba

Communication from the Government

129. On 4 June 1999, the Permanent Mission of Cuba sent a reply to the Special Rapporteur to his letter dated 17 May 1999 in which he reiterated his request to undertake an in situ visit. The Permanent Representative informed the Special Rapporteur that the Government of Cuba recognized the important role that the conventional and extraconventional mechanisms of the United Nations play in their objective of promoting and protecting all human rights in all parts of the world. However, some urgent measures needed to be adopted in order to guarantee the objectivity, impartiality and non-selectivity of these mechanisms, and to rationalize and simplify them.

130. Based on these political considerations, the Government had kept a close and permanent cooperation with the thematic mechanisms of the Commission on Human Rights and the organs of the treaty bodies. This cooperation had gone beyond extending invitations to undertake in situ visits and included the systematic exchange of information and prompt replies to requests for information, as well as active participation in the debates and the negotiation process at the sessions of the Commission. Extending invitations to the thematic mechanisms was one form of cooperation. The Cuban authorities had always considered that such visits could take place as long as they were opportune and would provide a substantive input to their work or, in other words, when they were in the interest of and convenient for the country. But most importantly, the Cuban authorities had always said that these types of actions would be more viable when the politically motivated aggression and unfair, selective and discriminatory treatment by the United States of Cuba at the sessions of the Commission on Human Rights for the past seven years ended.

131. Based on these premises, the Government of Cuba had extended invitations to the Special Rapporteurs on violence against women and on the use of mercenaries, whose visits would take place in June and September 1999. However, the fifty-fifth session of the Commission on Human Rights had been characterized by a high level of confrontation and politicalization, and did not facilitate this particular form of cooperation as the Government of Cuba had intended. The Permanent Representative added that the results of the current process of reform of the mechanisms and methods of work of the Commission remained unknown and uncertain. The Government reiterated its intention to continue its close cooperation with the mandate of the Special Rapporteur.

Observations

132. While the Special Rapporteur appreciates the Government's comments, particularly with regard to the need for some guarantee of objectivity, impartiality and non-selectivity in the special procedures mechanisms, he notes that the Government should not place itself in a position where it can be said that it too is practising a form of selectivity in its selection of special rapporteurs to undertake in situ visits to its country. The Special Rapporteur first sought a mission to Cuba on 13 June 1996.

Democratic Republic of the Congo

Communications to the Government

133. On 22 June 1999, the Special Rapporteur sent a letter to the Government concerning information provided by the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, concerning the situation of the judiciary in the country. According to the information provided, there were two areas of main concern in regard to the judiciary: the dismissal of 315 magistrates by executive decree last year and the wide jurisdiction of military courts.

134. It was reported that on 6 November 1998, President Kabila issued Presidential Decree No. 144 by which 315 magistrates were dismissed. It was alleged that this presidential decree is in violation of Constitutional Decree No. 003 that provides for the Superior Council of

Magistrates as the organ responsible for disciplining or removing magistrates after due process. It was reported that the 315 magistrates were removed without according them the fundamental right to due process.

135. It was further indicated that on 23 August 1997, Decree-Law No. 19 was issued establishing a military court. According to article 4 of Decree-Law No. 19, this military court had competence to try civilians, under military rules of procedure, and the decisions of the court could not be appealed against or contested. It was indicated that those convicted faced death sentences and that several executions had been carried out.

Observations

136. The Special Rapporteur has not received a response from the Government.

Djibouti

Communication to the Government

137. On 19 January 1999, the Special Rapporteur sent a communication to the Government concerning human rights lawyer Aref Mohamed Aref. According to the information received, a travel ban was imposed on Mr. Aref, allegedly by the Chef de Cabinet of the President. It is reported that Mr. Aref first learned about this ban on 5 December 1998 at Djibouti airport as he was preparing to travel to the Paris Forum for Human Rights Defenders being held in commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights. Measures to challenge this ban have reportedly failed. It was further reported that Mr. Aref has been suspended from practising law for the past two years as a consequence of an ambiguous case. The source expressed concern that Mr. Aref was being punished for his professional functions, which included the promotion and protection of human rights.

Communication from the Government

138. On 16 February 1999, the Government sent a letter to the Special Rapporteur in reply to his letter dated 19 January 1999, concerning the case of human rights lawyer, Aref Mohamed Aref. The Government informed the Special Rapporteur that it had embarked on a wide-ranging overhaul and readjustment of the judicial system to ensure that it meets the requirements of a State governed by the rule of law. The Government informed the Special Rapporteur that the charges Mr. Aref had levelled against the State of Djibouti were absolutely groundless and the serious offences for which he was to stand trial were not related to his role as a civil rights campaigner. Mr. Aref's case involved an offence under ordinary law committed in the performance of his duties as a lawyer; the plaintiffs were British mutual insurance companies, United States and Cypriot shipowners and a Danish international trading company whose interests Mr. Aref was supposed to be representing in a commercial case before the Djiboutian courts. The Djiboutian State was completely unaware of Mr. Aref's handling of the case prior to the filing of a complaint by the plaintiffs. A fax dated 30 March 1995, which was sent to the then Chairman of the Djibouti Bar, by Mr. Jackson Parton, on behalf of the companies referred to above, contained a complaint against Mr. Aref for not preventing a cargo of wheat flour from Houston, Texas, aboard the vessel Amadeus, from being auctioned off for less than the reserve

price, while simultaneously representing the only bidder which met the preconditions for participating in the sale, namely the SOGIK company. Mr. Aref was entrusted with protecting the interests of the three members of P&I Club UK (namely the insurers, the charterers of the vessel, the shipowners and the consignors of the cargo). Mr. Aref could have prevented the auction from going ahead because he was the only lawyer involved and all bids had to be made through a lawyer. The plaintiffs believe that Mr. Aref wilfully betrayed their interests in order to collect fees from a party whose interests were diametrically opposed to theirs. The Chairman of the Djibouti Bar referred the complaint to the Principal State Counsel, who is responsible for disciplining lawyers. The Principal State Counsel decided to prosecute Mr. Aref for fraud and malpractice.

139. An investigating judge indicted Mr. Aref on the count of fraud on 23 January 1997, but the fact that he was a lawyer saved him from being remanded in custody.

140. The Djibouti Bar decided to suspend Mr. Aref on 3 February 1997. Following a series of delaying motions on the part of Mr. Aref and his lawyers designed to stay proceedings, a trial date of 15 February 1999 was set. Djibouti judicial authorities decided to confiscate his passport. Furthermore, the Government informed the Special Rapporteur that Mr. Aref had been implicated with dozens of other people in an abortive coup d'état in Djibouti in January 1991. He was acquitted in July 1992.

141. It was learned that Mr. Aref was sentenced to six months in prison on criminal charges in February 1999. He was released on 11 May 1999 under an amnesty proclaimed by the new President, Ismail Omar Guellen, who had taken office three days earlier. Mr. Aref was one of 47 convicted prisoners released under the amnesty. Mr. Aref has been suspended from practising law for a period of five years following a decision of the Court of Appeal on 5 May 1999 on his appeal against his six-month prison term.

Observations

142. The Special Rapporteur thanks the Government for the detailed response. If it was indeed a fact that Mr. Aref was convicted, sentenced and later suspended/banned from practising law because of his professional misconduct, as asserted by the Government, then the action taken against him cannot be faulted. However, the Special Rapporteur continues to receive information indicating otherwise. It was learned that Mr. Aref's trial for attempted fraud was flawed. It is also alleged that the five years' suspension from legal practice ordered by the court was against the law. It is further alleged this course of action by the Government is a reprisal and to stifle Mr. Aref's practice as he has been known for defending unpopular causes before the courts. The Special Rapporteur fears that the Government may be in breach of principle 16 of the Basic Principles on the Role of Lawyers.

Egypt

Communication to the Government

143. On 28 May 1999, the Special Rapporteur sent a follow-up letter concerning the dissolution of the Egyptian Bar Association (EBA) and of the country's regional bar

associations, and the subsequent appointment of sequestrators to administer the EBA and the regional associations. The Special Rapporteur drew the government's attention to recent information he had received according to which the office of the EBA had been closed by armed members of the security forces, and that the authorities continued to refuse to hold elections for the leadership of the Egyptian Bar. Owing to the seriousness of these allegations, the Special Rapporteur sought an invitation to carry out an in situ mission to study the situation of the independence of judges and lawyers in the country.

Communication from the Government

144. On 23 July 1999, the Government sent to the Special Rapporteur a letter in reply to the Special Rapporteur's letter dated 28 May 1999. The Government informed the Special Rapporteur that it was endeavouring to strengthen the role of all components of civil society, in particular professional associations, the independent jurisdiction of which in regard to all affairs of their members and their internal administration is protected by law. The current crisis in the Bar Association, one of the oldest professional associations, was attributable to internal disputes over financial misappropriations. Lawyers who were members of the Association had initiated a legal suit seeking to remove the sequestration placed on the Association with a view to ending the transgressions of various members of its administrative council. On that basis, legal proceedings in connection with the imposition of the sequestration had been instituted, together with the ensuring measures and effects, and legal judgements had been delivered in that regard. The present events thus related to the execution of these judgements, in which connection no executive authority may intervene.

145. A Cairo appeal court pronounced a final judgement on 13 July 1999 to end the sequestration and ruled that a judicial committee should organize elections for the suspended administrative council. Lawyers who support the sequestration submitted grounds for contesting the judgement in a process which stays execution until a decision concerning those grounds is made.

146. Asserting the full compliance of the Government with court judgements, the Minister of Justice reaffirmed in a press statement that the Egyptian Government was not responsible for the crisis in the Bar Association and that it had nothing to do with the legal judgement to end the sequestration or with seeking a stay of its execution.

Observation

147. The Special Rapporteur thanks the Government of Egypt for its reply; however, he awaits a reply from the Government to his request for an invitation to undertake an in situ visit.

Equatorial Guinea

Observations

148. In his last report the Special Rapporteur referred to information he had received concerning lawyer José Oló Obono, who was detained at the police station in Malabo

on 21 July 1998 (see E/CN.4/1999/60, para. 88). The Special Rapporteur has subsequently been informed that Mr. Oló Obono was released from Black Beach prison in Malabo on 15 January 1999, at the end of his prison term.

149. Concern has been expressed that Mr. Oló Obono was compelled to serve a sentence for charges that were allegedly meritless, particularly since the prosecutors had dropped the charges prior to sentencing. It is regrettable that the Government to date had not responded to the Special Rapporteur's communication of 26 April 1998.

Gambia

Communication to the Government

150. On 16 November 1999, the Special Rapporteur sent a communication concerning the situation of a former Judge of the High Court of the Gambia, Mr. R.H.O. Robbin-Coker. According to the information received, Justice Robbin-Coker had a two-year contract beginning on 31 January 1996, which upon expiry was renewed for one year. At the end of the year, Justice Robbin-Coker was given a further two-year contract. It was reported that on 6 September 1999, while on vacation, Justice Robbin-Coker learned that the Government had decided to terminate his contract in an article published by a local newspaper. It was alleged that the official communication concerning the termination of the contract of Justice Robbin-Coker was transmitted to him on 14 September 1999 without giving the reasons for such a decision as provided by article 141 of the Constitution of the Gambia. It has been pointed out that no query had been raised by the Government about either the work of Justice Robbin-Coker, his conduct or his health, as provided in the above-mentioned constitutional provision.

151. Prior to the termination of the contract of Justice Robbin-Coker, it was alleged that the Government had questioned some of his judicial decisions, particularly in the case of two employees of the Gambia Telecommunications Company Limited (GAMTEL) whose contracts were terminated allegedly in circumstances similar to those of Justice Robbin-Coker's termination. It was alleged that the Government had claimed that the decision of Justice Robbin-Coker was embarrassing to the Government.

Observation

152. The Special Rapporteur views with concern such an abrupt termination of a judicial appointment administratively and awaits a response from the Government to his communication.

Guatemala

Communication to the Government

153. On 13 October 1999, the Special Rapporteur sent a letter to the Government concerning information he received regarding prosecutor Celvin Galindo. According to the information received, Mr. Galindo, who was investigating the murder of Archbishop Gerardi, went into exile. The Special Rapporteur requested information from the Government as to the reasons for Mr. Galindo's decision.

Communication from the Government

154. On 25 October 1999, the Special Rapporteur received a reply to his letter of 13 October 1999. The Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH) informed the Special Rapporteur that on 3 September 1999, during a meeting with Mr. Galindo, the President and Executive Director of COPREDEH offered to mediate with the authorities to provide Mr. Galindo with additional police protection. On 24 September 1999, the Inter-American Commission on Human Rights requested the Government to adopt all necessary measures to ensure the life and integrity of prosecutor Galindo and prosecutor's deputy Marcos Anibal Sánchez.

155. On 29 September 1999, COPREDEH transmitted the request from the Inter-American Commission on Human Rights to the Minister of Government. COPREDEH asked the Attorney-General's Office if Mr. Galindo and Mr. Sánchez were provided with security measures by the public prosecutor's office as well. On 1 October 1999, the Attorney-General sent a letter to COPREDEH indicating that the office of the public prosecutor had indeed taken the appropriate measures. The Director of the National Civil Police also informed COPREDEH that a police car patrol had been assigned to the residence of Mr. Galindo and for Mr. Sánchez. On 7 October 1999, the local newspaper, Siglo XXI, published Mr. Galindo's letter of resignation from the prosecutor's office alleging telephonic surveillance, persecution, threats and intimidation as the main reasons for his decision. Mr. Galindo subsequently left the country with his family.

Observations

156. The Special Rapporteur was not surprised at this development. Allegations of threats, intimidation and harassment of judges and prosecutors have been rampant in Guatemala, as set out in his mission report.

Haiti

157. On 31 July 1999, the President of the Economic and Social Council addressed a letter to the President of the General Assembly (A/54/274) in which he referred to Economic and Social Council resolution 1999/4 of 7 May 1999 in which the Council decided to create an Ad Hoc Advisory Group on Haiti with the mandate of submitting to the Council at its substantive session of 1999 recommendations on how to ensure that international community assistance to the efforts to support the Government of Haiti in achieving sustainable development was adequate, coherent, well coordinated and effective.

158. In resolution 1999/11 of 27 July 1999 the Council confirmed the essence of all of the Advisory Group's recommendations, including recommendations for consideration by the General Assembly, as well as requests addressed to the Secretary-General and the different components of the United Nations system. In that resolution, the Council, inter alia, called upon the Secretary-General to take the necessary steps to develop a long-term development programme of support for Haiti to address the issues of capacity-building of governmental

institutions, especially in areas such as governance, the promotion of human rights, the administration of justice, the electoral system, law enforcement, police training, and other areas of social and economic development.

Observation

159. The Special Rapporteur will liaise with the independent expert on Haiti concerning the reform proposals.

Indonesia

Communication to the Government

160. On 1 March 1999, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on torture concerning 11 men reportedly arrested on 22 February in the village of Vatuvo, Maubara subdistrict, Liquisa district, by a team of soldiers of the Indonesian Armed Forces and an armed paramilitary group called Besi Merah Putih. According to the information received, they were part of a group of 18 men arrested and taken to police headquarters in the town of Liquisa. All 18 were allegedly denied food for the first days of their detention and 7 were reportedly released for medical treatment after human rights lawyers intervened. They reported that they had been beaten and ill-treated. The 11 still in custody are reportedly denied access to independent legal counsel, although they are now allowed visits from representatives of the Catholic Church. In view of the fact that the 7 men who had been released were believed to have been subjected to ill-treatment while in custody, fears were expressed that the 11 men remaining in custody may be at risk of torture and other forms of ill-treatment.

161. On 20 July 1999, the Special Rapporteur sent an urgent appeal jointly with the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture concerning the situation of 20 people who were reportedly arrested by the Indonesian National Army (TNI) on 9 July 1999 in Teunom subdistrict.

162. According to the information received, the 20 men were arrested on the basis of claims by the TNI that the armed opposition group Gerakan Aceh Merdeka had used the area around the plantation where the arrests took place. All 20 were believed to be detained at the District Military Command in West Aceh. It was further reported that they had been denied access to lawyers and to a local government official who attempted to visit them.

Observation

163. The Special Rapporteur awaits a reply from the Government to these communications.

Iran (Islamic Republic of)

164. The Special Rapporteur has taken note of the report of the Special Representative on the situation of human rights in the Islamic Republic of Iran (E/CN.4/2000/35). In his report, the Special Representative noted that the issue of fair trial was coming more and more to the fore in Iran as it sought to establish the rule of law and, in particular, as commitments were made by

government officials that persons charged with offences would be properly treated. However, it is clear from the incidents reported that one or more of the rights provided by international standards concerning due process are often not available to defendants in Iranian courts. For example, the Special Representative referred to the case of 13 Jews being detained in Shiraz on suspicion of espionage who are reportedly being denied access to a lawyer of their choice; given the time elapsed since their arrest, they have certainly not been brought to "trial without delay".

165. The Special Representative noted that a new chief of the judiciary, Ayatollah Mahmoud Hashami Shahroudi, had been appointed in August.

Observation

166. The Special Rapporteur will continue to liaise with the Special Representative to obtain more information on these developments.

Israel

Communications to the Government

167. On 13 January 1999, the Special Rapporteur sent an urgent appeal jointly with the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture concerning Taysar Muhmed Aouwda. According to the information received, Mr. Muhmed was reportedly arrested on 30 December 1998 at the General Security Service Interrogation Unit of the Jerusalem Russian Compound. It was reported that he suffered from a chronic illness and has been denied medication he had brought with him to the Russian Compound. On 4 January 1999, an ad hoc military proceeding was reportedly held and extended his detention for 15 days. It was also said to have ordered that he be examined by a prison physician. Although he was reportedly not interrogated during the first five days of his detention, he was denied access to his attorney. A petition to the High Court of Justice demanding that all forms of illegal interrogation immediately cease and that the Order Prohibiting Meeting with Counsel be immediately lifted was filed and then withdrawn on 6 January, when the State Attorney reportedly indicated that no physical pressure was being placed upon Taysar Muhmed Aouwda.

168. On 2 February 1999, the Special Rapporteur sent an urgent appeal jointly with the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture concerning Ali Mustafa Tawbeh. According to the information received, he was reportedly arrested in Arnoun by Israeli armed forces on 6 October 1997 and taken to the Khiam Detention Centre in south Lebanon. Israeli armed forces in south Lebanon have reportedly claimed that he was arrested for "planning a military operation against them". Since then, he has allegedly been denied legal counsel and it is believed that no charges have been brought against him.

Observation

169. The Special Rapporteur awaits a reply from the Government to his communication.

Japan

Communications to the Government

170. On 14 December 1998, the Special Rapporteur sent a communication concerning disciplinary action against Judge Teranishi. According to the information provided, Judge Teranishi was scheduled to participate as a panellist at a citizens' meeting to protest against a bill that would allow wire-tapping. Prior to this meeting, the Chief Justice of the Sendai District Court, where Judge Teranishi has been assigned, warned him against attending the meeting, reportedly on the basis of information given to him by the General Secretariat of the Supreme Court. Judge Teranishi did attend the meeting, but did not speak as a panellist. In May 1998, the Sendai District Court petitioned the Sendai High Court for disciplinary action against Judge Teranishi for unlawful "active engagement in a political movement".

171. It was further reported that the High Court rendered a decision in July 1998 to discipline Judge Teranishi by admonition in a proceeding closed to the press and the public, and that Judge Teranishi was not given adequate notice or opportunity to speak for himself, as is reportedly required by law. The source reported that Judge Teranishi had appealed against the High Court's decision in August 1998, and the case was pending before the Supreme Court.

172. On 11 May 1999, the Special Rapporteur sent a letter to the Government concerning the case of lawyer Yoshihiro Yasuda. According to the information received, Mr. Yasuda was detained in police custody for one month after his arrest on 6 December 1998 on suspicion of financial irregularities and he continued to be held in solitary confinement in a suicide-prevention cell in Tokyo Detention Centre, despite repeated appeals for his release on bail. It was reported that before his arrest Mr. Yasuda had acted as the main defence lawyer for the leader of the religious group that had carried out the fatal Tokyo subway gas attack in 1995. It was further reported that his work as a defence lawyer in this case has brought him considerable media criticism. Moreover, it was reported that the Tokyo District Court had ruled Mr. Yasuda's prolonged detention legal, and it appeared to have accepted the prosecutor's argument that he should be refused bail.

173. It was alleged that the prolonged detention of Mr. Yasuda was due to his role as a defence lawyer in the above-mentioned case and his ongoing detention would effectively deprive his client of his legal services and therefore jeopardize his right to a fair trial, as provided by article 14.3 of the International Covenant on Civil and Political Rights.

Communications from the Government

174. On 28 January 1999, the Government sent a letter to the Special Rapporteur in response to his letter of 14 December 1998. The Government informed the Special Rapporteur that the allegations were not grounded in the facts found lawfully and duly by the relevant judicial bodies. Under the Japanese judicial system, disciplinary actions against judges shall be taken not by the administrative authorities but by the judiciary with a view to guaranteeing the independent status of judges. The Sendai High Court, after a hearing lasting two sessions, gave its decision to discipline Judge Teranishi by means of a warning administered in a consultation with five judges. The hearings were held in the conference room of the High Court with attendance

of 35 advocates and Judge Teranishi himself. On 1 December 1998, the Japanese Supreme Court dismissed the appeal from Judge Teranishi on the basis that it was groundless.

175. On 9 April 1998, prior to the protest meeting, the Chief Justice of Sendai District Court told Judge Teranishi that his participation as a panellist against the bill would constitute unlawful "active engagement in a political movement", which was prohibited by the Court Organization Law, and that he might be subjected to disciplinary action.

176. At the meeting, Judge Teranishi announced that he had to cancel his participation as a panellist because he was warned by the Chief Judge of his District Court that he would be subjected to disciplinary action as a result. He did, however, express his opposition to the proposed legislation. The Government contended that by making these comments as a judge, Judge Teranishi played a role in supporting and promoting a campaign against the bills.

177. The Supreme Court defined unlawful "active engagement in a political movement" prohibited by the Court Organization Law as "systematic, calculated or continuous political activities which would prejudice the independence or impartiality" of a judge. In deciding whether the conduct in question constituted "active engagement in a political movement", the Supreme Court took into consideration subjective factors such as the intention of the conduct, as well as objective factors such as the contents of the conduct, the circumstances of the conduct or the site of the conduct. Based upon the facts mentioned above, the Supreme Court ruled that Judge Teranishi had in fact actively engaged in a political movement.

178. The disciplinary proceedings against Judge Teranishi were conducted in camera in accordance with the law. The Sendai High Court repeatedly advised Judge Teranishi to speak for himself during the hearing but Judge Teranishi, having commissioned about 1,000 advocates to speak for him, argued persistently that if the High Court would not accept his request for 50 advocates to appear for him at the hearing he would not make any statement. Furthermore, after the hearing, the High Court gave Judge Teranishi another opportunity to submit his story in writing, but he did not submit any statement.

179. According to the Japanese Code of Conduct for Judges, judges should be impartial and fair. In this spirit, the Court Organization Law prohibits active engagement in a political movement and prescribes disciplinary measures for violation thereof. The procedures for judicial discipline are provided for in the Law concerning Status of Judges and the Rules of the Supreme Court. Since the disciplinary action against Judge Teranishi was taken in accordance with these laws and rules, it was not in conflict with the Basic Principles on the Independence of the Judiciary.

180. On 9 July 1999, the Government sent a letter to the Special Rapporteur in reply to his letter of 11 May 1999 concerning lawyer Yoshihiro Yasuda. The Government informed the Special Rapporteur that Mr. Yasuda was appointed by the court as one of the defence counsels of Mr. Chizuo Matsumoto, the leader of the Aum Shinrikyo ("Sect of Supreme Truth") religious group on 30 October 1995. Mr. Matsumoto was charged on 17 counts, including conspiring with other members of the sect in the killing of 12 people and the injuring of 14 on the Tokyo subway using sarin gas on 20 March 1995. Mr. Yasuda worked for Mr. Matsumoto along

with 11 other defence lawyers until he was dismissed from his position as appointed counsel on 23 March 1999. He was subsequently hired by Mr. Matsumoto's daughter as a private defence lawyer.

181. Mr. Yasuda was arrested by the police for financial misdealings on 6 December 1998. He was detained on a warrant issued by a judge on 8 December, and prosecuted at the Tokyo District Court on 25 December. According to the indictment, Mr. Yasuda was a legal and adminstrative consultant for Sunzu Enterprise real estate company. Mr. Yasuda conspired with the company's director and an employee, who were his co-defendants, to illegally conceal property for the purpose of manipulation of funds.

182. Mr. Yasuda has maintained his innocence of the charges against him. However, the Tokyo District Court convicted his co-defendants on 17 May 1999, finding that the co-defendants had acted illegally on Mr. Yasuda's advice. Mr. Yasuda applied to the court for bail six times between 25 December 1998 and 9 June 1999. The court dismissed all his applications, finding that there were reasonable grounds to suspect that the accused might destroy evidence.

183. With respect to principle 16 of the Basic Principles on the Role of Lawyers Mr. Yasuda's prosecution and detention are based on his own criminal act and are in no sense a sanction for action taken in accordance with recognized professional duties, standards and ethics. Mr. Yasuda's continued detention is based on the court's judgement that there are reasonable grounds to suspect that he might destroy evidence and has nothing to do with the fact that he is one of the defence counsels for Mr. Matsumoto.

184. With respect to the allegation that Mr. Yasuda's detention would jeopardize Mr. Matsumoto's right to a fair trial as provided by article 14 (3) of the International Covenant on Civil and Political Rights, Mr. Matsumoto has been provided with legal advice from other lawyers. Therefore, he has not been put in a position where his right to a fair trial is jeopardized.

Observations

185. In the case of Judge Teranishi, the Special Rapporteur considers that the course of action taken against him may have been justified on the facts. The conduct of Judge Teranishi appears to have been inconsistent with the role of a judge, in particular that a judge should not be seen to be involved in any forums which could be construed as political so as to preserve his impartiality and the appearance of impartiality.

186. In the case of Mr. Yasuda, though he was one of 11 counsels for the defence of Mr. Matsumoto and appointed by the court, his removal from the appointment and the subsequent criminal charges preferred against him obviously had the appearance of harassment of this lawyer.

Kenya

Communication to the Government

187. On 28 October 1999, the Special Rapporteur sent a letter to the Government concerning the case of the editor and publisher of the Post on Sunday Tony Gachoka. According to the information received, Mr. Gachoka was detained in connection with articles in his newspaper about alleged corruption in the judiciary. He was convicted of contempt of court and sentenced to six months' imprisonment, and fined 1 million Kenyan shillings (approximately US$ 13,500) by the Court of Appeal on 20 August 1999, for publishing articles alleging that several judges had received bribes in connection with a financial scandal.

188. It was alleged that Mr. Gachoka may not have received a fair trial for the following reasons: the full bench of the Court of Appeal, the highest court in Kenya, sat as the trial court and among the seven judges were judges mentioned in the articles as being implicated in the scandal; Mr Gachoka was denied the fundamental right to give oral evidence and deprived the right to call witnesses in his defence as provided by Order 52 of the Rules of the Supreme Council, and as indicated in the dissenting judgement of the presiding judge; and, by the highest appellate court having invoked original trial jurisdiction. Mr. Gachoka was deprived of a right of appeal.

Communication from the Government

189. On 5 November 1999, the Permanent Mission sent a letter to the Special Rapporteur in reply to his letter of 28 October 1999. The Permanent Mission informed the Special Rapporteur that the letter had been forwarded to the appropriate authorities in Nairobi for a comprehensive response to the concerns expressed. However, Mr. Gachoka had been released from prison on 3 November 1999 following a presidential pardon.

Observations

190. The Special Rapporteur thanks the Government of Kenya for its reply and is pleased to note that Mr. Gachoka has been released. However, he remains concerned over the allegations of lack of fair trial procedure by the highest court of Kenya. The Special Rapporteur has sought an in situ mission to Kenya.

Lebanon

Communication to the Government

191. On 25 June 1999, the Special Rapporteur sent a letter to the Government concerning the killing of four judges. According to the information provided, Judges Hassan Osman, Assem Abu Daherm, Imad Shehab and Walid Harmoush were gunned down in an attack. It was reported that all the perpetrators escaped after the shooting and the motives were not known.

Observation

192. The Special Rapporteur awaits a reply from the Government to his communication.

Malaysia

193. In his last report (E/CN.4/1999/60, para. 121) the Special Rapporteur drew attention to his communications dated 28 September, 9 October and 30 November addressed to the Government in connection with allegations of harassment of defence lawyers engaged in the trial of Anwar Ibrahim, the former Deputy Prime Minister of Malaysia.

194. In response to the communication of 28 September the Special Rapporteur received a communication dated 19 March 1999 from the Government stating, inter alia, that "in connection with a series of illegal assemblies where police permits were not obtained several were arrested. There were also those who had been summoned to police stations to give statements in accordance with Section 112 of the Criminal Procedure Code. In that regard, the lawyers could have been among those who were summoned to give statements. It is our view that this was done in accordance with the laws. Obtaining statements from them should not have any effect on their work as lawyers for ... Anwar Ibrahim".

Observations

195. While appreciating that obtaining statements from these lawyers may have been strictly in accordance with the law, the several working hours they spent at the police stations deprived them of time spent preparing the defence for their client. That could amount to interfering with their professional duties and may be viewed as harassment.

Defamation suits against the Special Rapporteur

196. The Special Rapporteur also drew the attention of the Commission to the ongoing four defamation suits against him before the Malaysian Courts (ibid., paras. 115-120 and E/CN.4/1988/39/Add.5).

197. The Secretary-General, having exhausted all efforts, including the dispatch of a Special Envoy twice to Kuala Lumpur to resolve the dispute or agree with the Government on the terms of reference for referring the dispute to the International Court of Justice in July 1998, sought a resolution of the Economic and Social Council to refer the dispute to the Court. The Council adopted a resolution and referred the dispute for an advisory opinion pursuant to section 30 of the Convention on the Privileges and Immunities of the United Nations. The Court, after receiving written submissions from the United Nations and the Government of Malaysia and several interested Member States, heard oral arguments on 7, 8 and 10 December 1998 at The Hague. In the course of her oral arguments the Solicitor General of Malaysia assured the court that "Malaysia fully recognized the provisions of section 30 of the Convention which accords binding quality to the Advisory Opinion of the Court".

198. The Court delivered its opinion on 29 April 1999. The Court, by a majority of 14 to 1, held that article VI, section 22, of the Convention applied to the Special Rapporteur and that he

was entitled to immunity from legal process of every kind for the words spoken by him during an interview as published in an article in the November 1995 issue of International Commercial Litigation. The Court also held that the Government should have informed the Malaysian courts of the finding of the Secretary-General. It unanimously added that the Special Rapporteur should be "held financially harmless for any costs imposed upon him by the Malaysian courts, in particular taxed costs". The Court then directed that since it held that the Special Rapporteur was an expert on mission who under section 22 (b) was entitled to immunity from legal process, the Government was obliged to communicate the Advisory Opinion to the competent courts, in order that Malaysia's international obligations be given effect and the Special Rapporteur's immunity respected (emphasis added). In its resolution 1999/64 of 30 July 1999, the Economic and Social Council inter alia took note of the stated commitment by the Government of Malaysia to abide by the Advisory Opinion and stressed Malaysia's obligation as a party to the Convention on the Privileges and Immunities of the United Nations "to make further efforts, in order that its international obligations thereunder be given effect and Dato'Pamam Cumaraswamy's immunity be respected, in accordance with the Advisory Opinion of the International Court of Justice".

199. Despite the communication of the Court's Advisory Opinion to the Malaysian courts by the Attorney-General and the Minister for Foreign Affairs, the Malaysian courts have failed to strike out or dismiss the suits. On 18 October 1999 the Registrar of the High Court in Kuala Lumpur, in a decision given in the fourth suit, dismissed the Special Rapporteur's application to strike out the same suit holding that his court was not bound by the opinion of the International Court of Justice. The Special Rapporteur has appealed against that decision. That appeal together with the Special Rapporteur's applications to strike out the second and third suits and submit the first suit for case management are all scheduled to be heard by a judge of the High Court on 19 January. On that date the judge heard part of the appeal. In the course of the proceedings, the judge observed that there were two conflicting points in the Advisory Opinion and inquired whether the Malaysian court had to be bound by a decision "when it is conflicting in itself". He then postponed further hearing to 9 February 2000 for counsel to address him on this issue. He also postponed hearings in the other three suits to 9 February.

200. In another development, on 29 September 1999, the Prime Minister of Malaysia, in the course of his address to the General Assembly, without naming him attacked the Special Rapporteur and the Commission for having appointed him to his office. The Prime Minister made the following four points, inter alia:

(a) That the United Nations chose a person well known for his virulent attacks against the Malaysian judiciary to report on that institution;

(b) That the United Nations then conferred on him total immunity against the law of his country without reference to consent of the country;

(c) That Governments are told that they must not interfere with the judiciary;

(d) Yet in this case the Government was expected to instruct the judiciary not to act against this "United Nations commissioner for breaking the laws of the country". He added, "nor do I think it is proper to hint at dire consequences for the Malaysian nation if this man is not freed from court action for open contempt and defamation".

201. The Prime Minster's speech, and in particular what he said about the Special Rapporteur, was given front-page coverage in most of the Malaysian dailies on 30 September.

202. On 1 October 1999 the Special Rapporteur issued a press statement in which he responded to the aforesaid points by stating the following:

> "My statements on the Malaysian judiciary were all in relation to protecting and securing its independence, impartiality and integrity. Indeed, the attached press clippings clearly show how in the late eighties I came in defence of the independence of the Malaysian judiciary against attacks on it by the Prime Minister himself. I call upon the Prime Minister to identify any statement of mine made before or about the time of my appointment as Special Rapporteur, which was a 'virulent attack on the Malaysian judiciary'.
>
> "The immunity from legal process claimed by the United Nations in my case was pursuant to the Convention on Immunities and Privileges of the United Nations of 1946. Malaysia ratified this Convention without any reservation whatsoever in 1957. By its act of ratification Malaysia consented to the application of this Convention including its application to its own citizens. Hence the assertion that the United Nations conferred on me the immunity without the consent of Malaysia is untenable and baseless.
>
> "It is a cardinal principle in consular and diplomatic law that when immunity from legal process is claimed by a diplomat it is the executive which asserts the same in a court of law either in person or in writing. Generally there is a domestic legislation to that effect. Indeed, in the case of international organizations, there is in Malaysia the International Organisations (Privileges and Immunities) Act 1992. Section 7 of that Act provides:
>
> > '7.1 (1) The Minister may give a certificate in writing certifying any fact relating to the question whether a person is, or was at any time or in respect of any period, entitled, by virtue of this Act or the regulations, to any privileges or immunities.
> >
> > '(2) In any proceedings, a certificate given under this section is evidence of the facts certified.'
>
> "Where the law itself provides for the executive to intervene in the legal process how could it be said that such intervention would interfere with judicial independence? In fact there is a judgement of the highest court in England to the effect that such intervention does not amount to executive interference in the independence of the judiciary.
>
> "[The Prime Minister] alluded to the fact that I had broken the laws of the country. No court of law has found me in contempt, or liable for defamation or that I had broken the laws of the country. Yet the Prime Minister has prejudged and delivered his verdict, thus being judge and jury."

203. In yet another development, at the meeting of the Economic and Social Council on 16 December 1999, the Legal Counsel, was invited by the President of the Council to brief Member States on the developments in the legal suits against the Special Rapporteur. In the

course of this briefing the Legal Counsel referred to the letter dated 15 December 1999 (E/1999/124) from the Secretary-General to the President of Council in which the Secretary-General notified the Council that as the United Nations had maintained that the Special Rapporteur had acted within the course of the performance of his mission when he spoke the words giving rise to the subject proceedings, the United Nations was obliged to indemnify him for any costs, expenses or damages arising out of the proceedings. He added that the United Nations had therefore submitted a claim for reimbursement to the Government of Malaysia for legal expenses it had paid on behalf of the Special Rapporteur in connection with the proceedings in the four suits. Those expenses had been accumulating since January 1997 and amounted at that time to US$ 110,886.91 (see Press Release ECOSOC/5880).

204. The Representative of Malaysia, in a statement to the Council said that the suits in question were suits between private parties, to which the Government was not a party. The judicial arm of the Government was expected to enjoy independence, as provided for in the Constitution of Malaysia, and for that reason the Malaysian Government could not direct either the Malaysian court or the concerned parties to accept the Court's Advisory Opinion.

205. At the conclusion of the discussion on this matter the President of the Council said that the Council would continue to be seized of the matter, but additional consultations would be necessary.

Observations

206. It is a well-established rule of international law that the conduct of any organ of a State must be regarded as an act of that State. The judiciary being one of the organs of the State, it is expected to give effect to the treaty obligations of the State. Failure to do so will make the State liable for breach of its treaty obligations.

207. The Government's contention that the suits were commenced by private parties and that it therefore cannot be seen to interfere is no justification for its failure, to date, to invoke its domestic legislation, namely section 7 of the International Organisations (Privileges and Immunities) Act 1992, and give an amended certificate to the court expressing the finding of the International Court of Justice. This failure, coupled with the speech of the Prime Minister before the General Assembly attacking the Special Rapporteur personally, calls into question the Government's neutrality and objectivity in the application of the law, including international law as advised by the International Court of Justice in this matter.

Mexico

Communication to the Government

208. On 13 August 1999, the Special Rapporteur sent a letter to the Government concerning the case of human rights lawyer Israel Ochoa Lara. According to the information received, Mr. Ochoa, who represents indigenous communities in southern Mexico, was subjected to prosecution as a result of his work. It was reported that for more than two years he has faced criminal charges, and on 25 June 1996 an arrest warrant was issued against him. It was indicated that the warrants stem from charges preferred in February 1997 under article 232 of the Federal

Penal Code, which prohibits sponsoring or assisting two parties with conflicting issues in the same activity. One of Mr. Ochoa's clients had allegedly implicated another of his clients in criminal wrongdoing in a confession to authorities. It was reported that Mr. Ochoa first learned of the possible conflict in a hearing on 11 February 1997. He immediately withdrew from representing the client allegedly named in the confession of the other, and from taking any steps in the case.

209. There was serious doubt as to whether Mr. Ochoa's actions were even covered by the provision under which he was charged. The provision appears to be intended for commercial and other civil matters rather than criminal matters. It was alleged that it was fairly common practice in rural Mexico for a single attorney to represent more than one defendant in a criminal case. It was further reported that in the course of his representation, Mr. Ochoa had accused members of the Public Prosecutor's Office and the Federal Police of using torture and other improper tactics to extract involuntary confessions from various persons detained on suspicion of involvement with a rebel group.

Observation

210. The Special Rapporteur is pleased to learn that a judge declared both the arrest warrant and the criminal investigation invalid and subsequently the Attorney-General's Office allowed the appeal period to expire.

Nepal

Communication to the Government

211. On 19 February 1999, the Special Rapporteur jointly sent an urgent appeal with the Special Rapporteur on torture to the Government concerning the case of Sahadev Jung Shah, the Chairman of the Jajarkot District Bar Association and President of the People's Rights Concern Movement, Jajarkot, and Shiva Prasad Sharma, a librarian at the Bheri Gyanodaya Campus, Jajarkot. They were reportedly arrested on 12 January 1999 and have since then been detained incommunicado at Jajarkot district jail. According to the information received, they were arrested on suspicion of involvement in the Communist Party of Nepal (Maoist) "people's war". Habeas corpus writs have reportedly been filed by their legal representatives in the Supreme Court.

Observation

212. The Special Rapporteur is awaiting a reply from the Government to this communication.

New Zealand

Communication from the Government

213. In his last report (E/CN.4/1999/60, para. 124) the Special Rapporteur drew the attention of the Commission to a communication dated 11 November 1998 to the Government regarding a

complaint by Moti Singh. On 7 April 1999 the Special Rapporteur received the Government's response. The Government indicated that the Chief District Judge had looked into the complaint and made the following observations.

214. Firstly, it should be clarified that while Judge Bouchier acknowledged that she had made the alleged comments in public, she denied that any were made in private. Secondly, Judge Bouchier was never the trial judge in the particular case involving Mr. Singh as the complainant. Thirdly, Judge Bouchier acknowledged that she had made an error, expressed regret at the comments and apologised for any embarrassment. The Chief District Court Judge has pointed out that there is no more that could have been done. There is no power in New Zealand law to discipline or reprimand a judge. This is, of course, to protect the independence of the judiciary, in that each judge functions independently from the other arms of the Government and from other members of the judiciary, in whatever position. In New Zealand criminal law, a complainant has no status in a prosecution for a crime; the parties are the police, representing the State, and the defendant. Mr. Singh in that sense is therefore not party to a prosecution.

215. The Government noted that the Special Rapporteur had drawn attention to principles 2 and 6 of the Basic Principles on the Independence of the Judiciary. The Government pointed out, with respect to principle 2, that the judge in fact did not decide anything. She had accepted that she acted unfairly in making the comments about Mr. Singh's credibility. Ultimately, however, it was for the police to decide whether they wished to proceed with the prosecution.

216. The question of compensation for Mr. Singh's alleged financial loss arising from the complaint of criminal conduct is a matter entirely separate from the criminal proceedings. As has been pointed out to Mr. Singh, he has a right to bring civil proceedings to try to recover the money that was the subject of the criminal complaint. Even if the criminal prosecution had proceeded and if it had resulted in a conviction, there is no guarantee that the criminal process could have been used to compensate Mr. Singh as an order for reparation is a discretionary order in criminal proceedings.

Observations

217. There appears no doubt that the police withdrew the prosecution based on the injudicious comments of Judge Bouchier on the credibility of Mr. Moti Singh, who was the complainant. Judge Bouchier was not the judge in the trial in which Mr. Singh was the complainant. Judge Bouchier's conduct is tantamount to her having interfered in the administration of criminal justice in the matter, resulting in the integrity of the judge being brought into question. The Special Rapporteur expresses surprise and concern over the fact that there is no procedure in New Zealand to discipline judges for such misconduct. Mere expression of regret by the judge concerned for such misconduct may not help to command respect for the independence of the judiciary. Legislation providing for a disciplinary procedure to deal with complaints against judges with adequate safeguards as provided in principles 17-20 of the Principles on the Independence of the Judiciary is not inconsistent with judicial independence.

Pakistan

Communications to the Government

218. On 14 January 1999, the Special Rapporteur sent a letter to the Government concerning the harassment of the defence counsel for the former Prime Minister, Benazir Bhutto, and Senator Asif Ali Zardari. According to the information received, on 24 December 1998, the law offices of defence counsel, Babar Awan, were allegedly broken into by the Pakistan authorities and ransacked, with voluminous defence files concerning Senator Zardari and Mrs. Bhutto stolen. It was also reported that Mr. Awan's clerk was arrested. It was further alleged that this incident had been preceded by a series of acts of intimidation, coercion and threats against the defence counsels of Mrs. Bhutto and Senator Zardari. These acts included the kidnapping of defence counsel Pir Mazhar; three arrests of defence counsel Abu Bakar Zardari; a travel ban on defence counsel Farooq Naek; the issuance of a tax notice to defence counsel Aitzaz Ahsan; a head injury to defence counsel Raza Rabbani; issuance of tax notices to defence counsel Sattar Najam; the freezing of bank accounts of defence counsel Sardar Latif Khosa; the arrest of Babar Awan; issuance of fresh tax notices to Farooq Naek; and issuance of tax notices to Babar Awan.

219. On 22 February 1999, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding the case of Mr. Ansar Burney, a human rights lawyer and Chairman of the Ansar Burney Welfare Trust International. According to the information provided, Mr. Burney, his family members and staff/volunteers were receiving death threats, allegedly from terrorist groups in Pakistan. According to the information received, the threats have been received by telephone, e-mail and letter. It was further reported that during the past four years, Mr. Burney's home and office have been attacked. In these attacks, staff members of the Trust and four of his brothers, Burney Syed Muzaffar Burney, Syed Sarim Burney, Syed Altamash Burney and Syed Haroon Burney, were injured. During this period, other staff members of the Trust have been murdered in other attacks by alleged terrorists.

220. On 12 April 1999, the Special Rapporteur sent an urgent appeal to the Government concerning the case of lawyer Asma Jahangir. According to the information provided, Ms. Jahangir, who is also the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, has received death threats as a result of her legal representation of a woman seeking a divorce. The client was murdered on 6 April in the office of Asma Jahangir at the behest of the family, and the gunman was killed by the office guard. It was further reported that the Sarhud Chamber of Commerce and Industry and local Ulama in Peshawar have asked the Government to file double murder charges against Asma Jahangir and to withdraw murder charges against Ghulam Sarwar, the father of the client, and his family members.

221. On 21 May 1999, the Special Rapporteur sent a letter to the Government concerning the alleged attempted murder of Senator Asif Ali Zardari (husband of former Prime Minister Bhutto) in police custody in Karachi, on 17 May 1999. It was alleged that the Government of Prime Minister Nawaz Sharif intended to register the death as a suicide. It was further reported that during his detention Mr. Zardari has restricted access to lawyers.

222. On 31 May 1999, the Special Rapporteur sent a follow-up letter to the Government concerning his earlier communication of 12 April 1999 and the Government's response dated 22 April 1999. The Special Rapporteur had since received further information with regard to the possibility of both Asma Jahangir and her sister, lawyer Hina Jilani, being arrested pursuant to a complaint preferred against them for the murder of the persons referred to in his earlier communication. The Special Rapporteur also learned that Ms. Jilani had applied for and was given protection for 30 days by the court.

223. On 8 October 1999, the Special Rapporteur sent a letter to the Government in reference to his earlier communications dated 28 September 1995, 17 January 1996, 23 September 1997, 16 October 1997, 11 December 1997 and 16 September 1998 in which he requested to lead a mission to investigate the state of independence of the judiciary and lawyers in Pakistan. The Special Rapporteur informed the Government that he has continued to receive communications concerning alleged breaches of the independence and impartiality of the judiciary and threats against lawyers.

Communications from the Government

224. On 21 January 1999, the Permanent Representative of Pakistan acknowledged receipt of the letter of the Special Rapporteur dated 14 January 1999. He informed the Special Rapporteur that the letter was forwarded to the authorities in Islamabad.

225. On 16 March 1999, the Permanent Representative of Pakistan again acknowledged receipt of the letter of the Special Rapporteur dated 14 January 1999 regarding the alleged harassment of the defence counsel for the former Prime Minister, Mrs. Benazir Bhutto, and Senator Asif Ali Zardari. He informed the Special Rapporteur that the Constitution of the Islamic Republic of Pakistan guarantees basic human rights and fundamental freedoms. The Government respects the independence of the judiciary and realizes the important role of lawyers, who must enjoy complete freedom in performing all their professional functions without intimidation, harassment, hindrance or improper influence. The alleged instances will be investigated and, if established, those responsible would be punished.

226. On 22 April 1999, the Permanent Representative of Pakistan sent a letter to the Special Rapporteur in reply to his letter dated 12 April 1999 concerning the alleged threats received by Ms. Asma Jahangir, Special Rapporteur on extrajudicial, summary or arbitrary executions. He informed the Special Rapporteur that, as an interim response, he had been advised by his Government to inform the Special Rapporteur that it has provided security guards for the protection of Ms. Jahangir and her colleagues, consisting of one head constable and four police constables, together with a commando. Also, the local police as well as the special mobile police squad have been directed to pay random visits to ensure the security of Ms. Jahangir and her colleagues.

Observations

227. The Special Rapporteur thanks the Government for its reply and is pleased to learn that measures have been adopted to ensure the safety and integrity of Asma Jahangir. However, the

Special Rapporteur awaits a response from the Government to his other communications. The Special Rapporteur continues to receive communications relating to concerns in the administration of justice.

228. Just at the time of the completion of this report, the Special Rapporteur learned of a most disturbing development. Pursuant to the issuance of Oath of Office (Judges) Order 2000 by the Chief Executive, General Pervez Musharaf, all judges have been called to take a fresh oath of office declaring their allegiance to the Provisional Constitutional Order. The then Chief Justice Saiduzzaman Siddiqui and five senior judges and several provincial judges refused to take the oath. The Chief Justice was reported to have said that the judiciary cannot be made subservient to anybody and taking such a fresh oath was a clear violation of the Constitution. It was learned that 89 out of 102 judges took the fresh oath.

229. The Chief Justice and the other judges who refused instantly lost their offices, i.e. they were virtually dismissed. The judges who took the oath remained in office. One senior judge among them was appointed the new Chief Justice. This development will seriously undermine the independence of the judiciary. The rule of law will remain in jeopardy so long as the Government is perceived as a Government of men and not of laws.

230. The Special Rapporteur is most saddened that there was no solidarity within the judiciary on this very crucial issue going to the core of judicial independence. He will continue to monitor developments.

Palestine

Communication to the Permanent Observer Mission of Palestine

231. On 28 May 1999, the Special Rapporteur sent a letter to the Permanent Observer Mission of Palestine concerning the situation of judicial institutions in the areas under the Palestinian Authority. According to the information received, the Palestinian Bar Association declared a one-day strike on 15 April, protesting the lack of judicial independence and demanding judicial reforms. It was further learned that Palestinian lawyers suspended work at Jenin Magistrate's Court on 17 May 1999 to protest the poor state of the Palestinian court administration. It was reported that the lawyers' protest action came after a sit-in, which was held the previous day, and that it followed a decision by the Jenin Magistrate's Court to postpone court cases for extended periods. Finally, concerns were expressed at the long-standing vacancies in the two key positions of Attorney-General and Chief Justice, which are also reportedly negatively affecting the effective administration of justice.

Observation

232. The Special Rapporteur awaits a reply to his communication. Some additional information has been received.

Paraguay

Communication to the Government

233. On 25 March 1999, the Special Rapporteur sent an urgent appeal to the Government concerning information he had received regarding attacks made against Supreme Court President Raul Sapena and Supreme Court Judge Elixeno Ayala. It was reported that on 27 January 1999, unknown persons threw Molotov cocktails and shot at the homes of the two judges. It was alleged that the perpetrators were supporters of General Lino Oviedo, the jailed former army chief. Further, the attack was apparently connected with the Supreme Court's decision that declared the presidential decree pardoning General Oviedo unconstitutional and ordering the General sent back to jail. Moreover, it was reported that these attacks followed a series of previous attacks on the Supreme Court premises and threats against Supreme Court judges. General Oviedo himself has reportedly demanded the resignation of the above-mentioned judges.

Observations

234. On 4 April 1999, during his second round of consultations in Geneva, the Special Rapporteur met with the Permanent Representative of Paraguay who provided the Special Rapporteur with a copy of a report on the investigations carried out by the prosecutor's office and the police into the attempts made against Justices Sapena and Ayala. In the report the National Police stated that it was not possible to determine the identity of the persons who attacked the homes of the two judges owing to a lack of fingerprints.

Peru

Communication to the Government

235. On 1 July 1999, the Special Rapporteur sent a letter to the Government concerning the case of Judge Antonia Saquicuray. According to the information received, Judge Saquicuray was transferred to an administrative body of the judiciary by Administrative Resolution No. 244-99-P.CSJL-PJ which provides that the President of the Superior Court can name, ratify, remove and promote provisional and alternate judges. However, the source indicated that Judge Saquicuray did not fall into any of these categories because she had a permanent contract and she had not been consulted about the transfer. It was reported that article 146 of the Peruvian Constitution provides that the State should guarantee that magistrates are not removed from their posts and are not transferred without their consent.

236. The source indicated that Judge Saquicuray was transferred immediately after she opened an investigation on a complaint filed by a group of journalists against the Association for the Defence of the Truth (APRODEV). It was reported that the Association had publicly attacked and discredited this group of journalists on its Web site. According to the source, it is presumed that the Association has ties with the National Intelligence Service.

Observation

237. The Special Rapporteur awaits a response from the Government to his communication.

Philippines

Communication to the Government

238. On 8 January 1999, the Special Rapporteur sent an urgent appeal to the Government expressing his grave concern regarding the demonstrations that were taking place on the streets of Manila as a result of a recent Supreme Court decision. The Special Rapporteur was particularly alarmed by the calls for the abolition of the Supreme Court. In light of these popular demonstrations, the Special Rapporteur requested an invitation to undertake an urgent mission to Manila.

Observation

239. The Special Rapporteur awaits a response from the Government to his communication.

Rwanda

240. In his report to the General Assembly (A/54/359, para. 127), the Special Representative of the Commission on Human Rights on the situation of human rights in Rwanda reported that the Government had undertaken a series of bold moves, most notably the plan to use traditional justice (gacaca) to try those suspected of genocide, in view of the current crisis in the prisons. The crisis in the prisons is part of the greater challenge to rebuild Rwanda's judiciary, because overcrowding is due primarily to the slowness of the justice system in processing cases and completing trials.

241. The Special Representative reported that between 1994 and 31 December 1998, 1,274 persons were tried on charges related to genocide. Of these, 18.2 per cent were condemned to death, 32 per cent to life imprisonment, 31 per cent to jail terms of between 1 and 20 years, and 18 per cent were acquitted. The Special Representative complimented this process. Trials are closely monitored and found to conform with international standards. The Danish Centre for Human Rights has trained Rwandan defenders, and defence lawyers are provided by Avocats sans Frontières (Lawyers without Borders). This has pushed up the rate of acquittals appreciably.

Observation

242. The Special Rapporteur will continue to liaise with the Special Representative concerning the situation of the judiciary in Rwanda.

Saudi Arabia

Communication to the Government

243. On 11 October 1999, the Special Rapporteur sent a letter to the Government requesting an invitation from the Government to undertake an in situ visit in order to meet directly with all the relevant parties with regard to the state of independence of judges and lawyers.

Observations

244. The Permanent Mission has responded and initiated dialogue with the Special Rapporteu in this connection.

South Africa

Communication to the Government

245. On 22 July 1999, the Special Rapporteur sent a letter to the Government concerning information he had received that the Policy Unit of the Department of Justice of South Africa had produced a White Paper pertaining to policy in the judiciary (including the magistracy). It was learned that the document, while containing some positive statements, provides for a narrow interpretation of judicial independence and a broad definition of judicial accountability. The Special Rapporteur requested a copy of the document.

Observations

246. The Special Rapporteur received a copy of the White Paper. In view of the then impending mission in November 1999 to South Africa, the Special Rapporteur refrained from pursuing the matter by correspondence with the Government. Since then the Special Rapporteu has received further information that a draft bill to establish a judicial complaint committee with a view to greater judicial accountability was being circulated and the views of those within the administration of justice system sought. The Special Rapporteur had received a copy of this draft bill. Some judges and magistrates have expressed concern over the implications of the bill, if enacted into law, on the independence of the judiciary. As stated earlier, the Special Rapporteur is currently in discussions with the Permanent Mission of South Africa in Geneva with regard to restructuring the cancelled mission for April 2000. He intends to discuss issues pertaining to the independence of the judiciary, and in particular the independence of the magistrates and the implications of the White Paper and the draft bill, during the mission.

Sri Lanka

Communication to the Government

247. On 9 December 1998, the Special Rapporteur sent a letter to the Government concerning the case of Kumar Ponnambalam, a well-known defence lawyer and General Secretary of the Al Ceylon Tamil Congress. It was reported that there had been a widespread and well-publicized call by Sri Lankan newspapers that Mr. Ponnambalam should be taken into custody and charged

with criminal defamation of the President and with supporting the Liberation Tigers of Tamil Eelam (LTTE). The source claimed that the calls for his arrest were based upon his work as a criminal defence lawyer and for speeches or statements he had made before various international bodies concerning the human rights situation in Sri Lanka. Fears were expressed that Mr. Ponnambalam would be arrested upon his return to Colombo on 25 December.

248. On 18 May 1999, the Special Rapporteur transmitted an urgent appeal to the Government concerning further developments in the country and in particular the case of Percy Wijesiriwardene, a Grade 1 Judicial Officer. According to the information provided, Mr. Wijesiriwardene was removed from office by the Judicial and Legal Service Commission without being accorded due process and in particular without being shown the charges against him. Furthermore, it was reported that Mr. Wijesiriwardene had been intimidated into submitting a letter seeking retirement. Mr. Wijesiriwardene's petition to the Supreme Court for leave to challenge the removal on the grounds of breach of his fundamental rights pursuant to articles 12 (1) and 14 (1) (g) of the Constitution was dismissed without any reason given.

249. The Special Rapporteur also requested an invitation from the Government to carry out an in situ mission to Sri Lanka to study matters relating to the independence of the judiciary and the independence of lawyers, including the role and impartiality of prosecutors.

250. On 22 June 1999, the Special Rapporteur transmitted a letter to the Government concerning an incident at Ratnapura Magistrate's Court. It was reported that on 19 May 1999 the Magistrate of Ratnapura was threatened, insulted and humiliated by an unruly mob for having performed his lawful judicial function. Though the Minister for Justice had condemned the action of the mob, the alleged incident was of concern.

251. On 13 September 1999, the Special Rapporteur sent an urgent appeal to the Government concerning information he had received regarding the appointment of a new Chief Justice. According to the information provided, the Chief Justice was retiring and a controversy had arisen over the appointment of his successor. The Special Rapporteur informed the Government that his attention had been drawn to the fact that, save in a very few cases, the general practice had always been to appoint the next most senior judge of the Supreme Court as Chief Justice. However, he was informed that the Government was considering appointing the current Attorney-General to the post who, although he had been a Supreme Court judge when he was appointed Attorney-General, was the most junior of the judges. His attention had also been drawn to two petitions before the Supreme Court to strike the Attorney-General off the rolls of advocates for misconduct.

252. On 28 October 1999, the Special Rapporteur sent an urgent appeal to the Government concerning the criminal prosecution of Jayalath Jayawardena, a member of Parliament, whose trial had been postponed several times since it began on 30 May 1997 at the behest of the prosecution for flimsy reasons, very often for the non-availability/absence of counsel for the prosecution. International foreign observers had been present in court to observe the trial on several occasions and the postponements had been costly in terms of effort, time and expense. The trial was called for hearing once again on 14 October 1999, when all the witnesses were present, but prosecuting counsel was not present for "personal reasons". The court once again

postponed the trial until 11 November 1999. It was also alleged that the trial is politically motivated and the postponements were orchestrated by the Government to frustrate international observers.

Communications from the Government

253. On 26 January 1999, the Government sent a letter to the Special Rapporteur in reply to his letter of 9 December 1998. The Government informed the Special Rapporteur, inter alia, that Mr. Ponnambalam had reportedly made a public statement on national television that he was a supporter of a well-known terrorist group, the Liberation Tigers of Tamil Eelam (LTTE). The LTTE is banned in Sri Lanka. In view of the statement, the law enforcement authorities were obliged to carry out investigations as to the nature of Mr. Ponnambalam's support. There was no prior decision to arrest Mr. Ponnambalam. Action would be taken to conduct an inquiry to ascertain the facts and if any wrongdoing is discovered appropriate legal proceedings would be instituted. Like any other citizen of Sri Lanka, Mr. Ponnambalam can challenge these legal proceedings, if and when they are instituted, in the courts, in particular in the Supreme Court, which has jurisdiction over fundamental rights in accordance with the Constitution of the country and the International Covenants on Human Rights.

254. On 7 July 1999, the Government sent a letter to the Special Rapporteur in reply to his letter of 18 May 1999. In view of the confidentiality of the material disclosed in this communication and the request of the Government for confidentiality, the Special Rapporteur will limit himself to a very short summary of the communication, which stated that the Commission which was chaired by the Chief Justice did communicate the allegation to Mr. Wijesiriwardena. The allegations were quite serious in nature. Because of the seriousness, and rather than face disciplinary proceedings, Mr. Wijesiriwardena agreed to take early retirement. There was no pressure exerted on him by the Commission.

255. On 29 October 1999, the Permanent Mission acknowledged receipt of the letter of the Special Rapporteur of 28 October 1999. The contents of the communication had been transmitted to the authorities concerned in Sri Lanka for clarification.

256. On 19 November 1999, the Government sent a letter to the Special Rapporteur in reply to his letter of 13 September 1999. The Government, inter alia, drew the attention of the Special Rapporteur to article 107 (1) of the Constitution which provides, inter alia, that the Chief Justice shall be appointed by the President of the Republic. The Honourable Sarath N. Silva, Attorney-General of Sri Lanka, was appointed Chief Justice in accordance with the above provision on 16 September 1999.

Observations

257. The Special Rapporteur notes with great concern the assassination of Mr. Kumar Ponnambalam on 5 January 2000. The Special Rapporteur sent a communication to the Government in regard to this assassination.

258. With regard to the case of Mr. Wijesiriwardena, having read the Government's response, the Special Rapporteur considers that being a judicial officer with some experience, Mr. Wijesiriwardena ought to have appreciated the implications of his agreement to take early retirement rather than face disciplinary proceedings.

259. With regard to the appointment of the Attorney-General as Chief Justice, as the appointment is now being challenged before the Supreme Court which will continue its hearings on 7 and 8 February 2000, the Special Rapporteur has decided not to disclose the full text of the Government's response to his communication. He also reserves his observations on this issue in view of the proceedings before the Supreme Court.

Sudan

Communication to the Government

260. On 9 April 1999, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on the situation of human rights in the Sudan, the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture, concerning the arrest of lawyers Ghazi Suliman, Mohamed Elzeen El Mahi, Wagdi Salih, El Taieb Idris, Mohamed Abdulla El Nago, Nasr El Din, Mamoon Faroug and Satia Mohamed El Hag. It was reported that 40 lawyers were detained by members of the security forces on 7 April 1999 in Khartoum following a rally by members of the Sudanese Bar Association. It was further reported that several persons were injured as a result of the beatings inflicted by the security forces and some needed to be hospitalized. Thirty-one of the lawyers were released early the following morning, but the above-mentioned nine lawyers were arrested on charges of disturbing public order and are being held at an unknown location.

261. On 6 August 1999, the Special Rapporteur transmitted an urgent appeal to the Government jointly with the Special Rapporteur on the situation of human rights in the Sudan and the Chairman of the Working Group on Enforced or Involuntary Disappearances, concerning the case of lawyer Hameed Mustafa Abdu. It was reported that Mr. Mustafa Abdu was abducted on 31 July 1999 between 9.00 and 9.30 a.m. outside his offices located at No. 53 Square 4, el Jirave East town, by an armed group reportedly linked to the security forces. He was taken to an unknown location. The security forces and the local police denied all knowledge of his whereabouts. Other steps taken by his relatives to determine his whereabouts have given no result.

Communication from the Government

262. On 8 May 1999, the Government sent a letter to the Special Rapporteur in reply to his letter dated 9 April 1999. The Government informed the Special Rapporteur that the nine lawyers had criminal charges filed against them on 7 April 1999 because they had used force to enter the building of the Bar Association. On 8 April 1999, the court sentenced Chazi Suliman to 15 days' imprisonment and a fine of 50,000 Sudanese pounds (which is less than US$ 200). On 10 April 1999 the court dropped the criminal charges against the other eight lawyers and they were released. The Court of Appeal affirmed the conviction of

Mr. Suliman but decided to set aside the sentence provided that he sign a promise of good conduct. He refused to do so. He was released after serving the 15-day sentence.

263. On 9 September 1999, the Government sent a letter to the Special Rapporteur in reply to his letter of 6 August 1999. The Government informed the Special Rapporteur that based on the information received from the appropriate authorities, Mr. Mustafa Abdu had never been arrested or detained.

Observations

264. The Special Rapporteur thanks the Government for its responses to his communications. He remains concerned over the disappearance of Mr. Mustafa Abdu.

Suriname

265. As stated earlier, the Special Rapporteur was invited to address an international conference on "Constitutional Safeguards for the Independence of the Judiciary - A Guarantee for the Consolidation of the Rule of Law and the Democratic Process in Suriname" held in Paramaribo on 5 and 6 November 1999. The Special Rapporteur delivered an address on "The Judiciary and Constitutionalism in a Democratic Society" soon after the opening of the conference by the President of the Republic of Suriname. This conference was organized by two organizations involved in the democratic processes in Suriname, Stichting Juridische Samenwerking Suriname - Nederland (SJSSN) and Due Process of Law Foundation (DPLF), to address a particularly serious problem relating to the administration of justice in Suriname.

266. In July 1998, after the retirement of the President of the High Court of Justice, the Executive made two controversial appointments. It appointed the acting Attorney-General as the new Attorney-General to the High Court of Justice, and appointed a sitting member of the High Court of Justice as the President of the High Court. Both appointments were opposed by the rest of the judges of the High Court of Justice on the grounds that the Executive had failed to follow the constitutional procedure for such appointments. A serious conflict between the Executive and the High Court of Justice ensued. This resulted in a number of judges not cooperating with the President of the Court. The President refrained from distributing files and constituting hearing panels. This led to the High Court of Justice coming to a standstill. Cases were not heard. There were public demonstrations outside the courts.

267. Efforts to resolve the impasse so far have not been successful. Lawyers have filed a suit before the High Court of Justice to challenge the constitutionality of the appointment. Decision has been postponed pending an out-of-court resolution of the dispute.

268. While in Paramaribo the Special Rapporteur met the President of the Court and the other judges at separate meetings in order to gain an insight into these rather unfortunate events which have resulted in the rule of law in Suriname being threatened. He also met members of the legal profession. The Special Rapporteur continues to monitor developments and, if necessary, would seek an official mission to Suriname.

269. The Special Rapporteur expresses his appreciation for the work of SJSSN and DPLF in the resolution of the dispute and for drawing his attention to the events.

Switzerland

Communication to the Government

270. In his report to the fifty-fourth session of the Commission (E/CN.4/1998/39, paras. 161-163), the Special Rapporteur drew attention to the case of Clement Nwankwo. The Special Rapporteur recommended to the Government that it offer adequate compensation to Mr. Nwankwo in the light of the Government's apologies for the conduct of its police officers over the manner in which Mr. Nwankwo was treated during arrest and in detention. The Government had also indicated then that an administrative inquiry had concluded that the treatment Mr. Nwankwo received was not in conformity with acceptable principles of police behaviour. Since then disciplinary actions were taken against the four police officers involved in the case.

271. The Special Rapporteur has since received a communication dated 24 November 1999 from the Government. He is informed that the sanctions imposed on the four officers in the form of caution, warning and reprimands by the administrative authority were set aside by the Appeals Commission of the Police.

Observations

272. While noting the decision of the Appeals Commission of the Police with some regret, the decision should not discourage the Government from offering adequate compensation to Mr. Nwankwo. The Government had apologized for the conduct of the police officers. Mr. Nwankwo was assaulted, suffered personal injuries and humiliation. Rather than subjecting Mr. Nwankwo to spend time and money to prosecute a civil claim for compensation, it is only proper and fair that Mr. Nwankwo be offered adequate compensation and that this rather ugly and unpleasant episode be laid to rest.

Trinidad and Tobago

Observations

273. In October 1999, the Special Rapporteur was informed that Pamela Ramjattan, who was sentenced to death in 1995 for being involved with two other men in the killing of her husband in 1991, had her sentence set aside and replaced by a sentence of five years' imprisonment on a reduced charge of manslaughter (see E/CN.4/1999/60, para. 168). This decision by the Court of Appeal came after two appeals to the Privy Council. According to a fresh psychiatrist's report, Ms. Ramjattan was suffering from diminished responsibility at the time of the killing. It was reported that she was subjected to ill-treatment for 11 years by the deceased. The Chief Justice acknowledged that Ms. Ramjattan had been tormented by her husband and stated, in reference to domestic violence, that "it is a phenomenon we are very conscious about. It has become endemic in our society and is a blot on the men in society".

274. The Special Rapporteur welcomes this judicial decision as it reflects a more sensitive approach on the part of the judiciary towards issues related to domestic violence against women.

Tunisia

Communication to the Government

275. On 22 June 1999, the Special Rapporteur sent a letter to the Government concerning the situation of the following 25 Tunisian lawyers: Radia Nasraoui, Bida Jameleddine, Bouthelja Mohamed, Ben Rhouma Ezzedine, Kousri Anouar, Bhiri Noureddine, Ekrmi Saida, Mourou Abdelfateh, Ben Amor Samir, Assoued Yahia, Abdallah Abdelhamid, Oba Abderraouf, Hosni Nejib, Raoani Amor, Rabia Mohsen, Yagoubi Najet, Ben Youssef Nejib, Ouelati Zine El Abidine, Nouri Mohamed, Boudhib Naziha, Ben Amor Sonia, Ayachi Hammami, Rafai Mohamed, Hamrouni Leila and Chaouchi Saida. According to the information received, these lawyers had been deprived of their passports by the Tunisian authorities as a result of their legal activities.

276. On 13 August 1999, the Special Rapporteur sent a letter to the Government concerning the situation of lawyer Radhia Nasraoui. According to the information received, Ms. Nasraoui, a human rights lawyer, was condemned by the Tunis Appeal Court to a six-month suspended prison sentence on 6 August 1999. It was reported that the sentence had been handed down when Ms. Nasraoui's lawyers were not present.

277. Furthermore, the Special Rapporteur referred to his previous intervention dated 1 July 1999 concerning the confiscation of Ms. Nasraoui's passport, along with those of the other 24 lawyers. The Special Rapporteur has not received a reply to this communication. Also, the Special Rapporteur referred to his earlier communications expressing concern about the safety of Ms. Nasraoui, dated 12 March 1998 and 1 August 1997. The Government replied to the communications on 3 June and 30 September 1998, respectively. In both replies the Government indicated that an investigation had been opened on the breaking into and ransacking of Ms. Nasraoui's office. To date, the Government has not provided information concerning the results of this investigation.

Communications from the Government

278. On 24 December 1999, the Permanent Mission of Tunisia sent a letter to the Special Rapporteur in reply to his communication of 1 July 1999. The Permanent Mission informed the Special Rapporteur that the following lawyers, listed in the letter of the Special Rapporteur, now had their passports: Mohamed Bouthelja (passport No. M 100259, issued on 20 July 1999); Zine El Abidine Oueslati (passport No. M 058993, issued on 19 June 1999); Sonia Ben Amor (passport No. M 061552, issued on 17 June 1999); Mohamed Rafèi Krisi (passport No. M 058945, issued on 14 June 1999); Saïda Chaouachi (passport No. M 078251, issued on 20 July 1999); Neziha Boudhib (passport No. M 093497, issued on 20 July 1999); and Leila Hamrouni (passport No. L 993284, issued on 18 February 1999).

279. In regard to the passports of Noureddine Bhiri, Saïda Akremi, Amor Raouani and Mohamed Néjib Ben Youssef, it was reported that they had expired and the lawyers had not

requested a renewal. In regard to Ayachi Hammami, it was indicated that he had lost his passport twice (passport no. K 905133), it will expire on 18 December 1999.

280. The Permanent Mission also indicated that Radhia Nasraoui had been prevented from travelling as a result of a decision issued by the Dean of the examining magistrates, dated 31 March 1998. Ms. Nasraoui was found responsible for the commission of illegal acts, including membership of an illegal association and the publication of defamatory statements against public authorities. She received a suspended sentence of six months in jail.

281. Finally, lawyers Ezzedine Rhouma, Abdelfattah Mourou, Yahia Lassaoued, Abderraouf Abba, Anouar Ksouri, Mohamed Nouri, Samir Ben Amor, Mohamed Nejib Hosni, Abdelhamid Ben Abdallah, Mohamed Mohsen Rbei and Jamel Bida, are advised to follow the procedures provided by Tunisian law in order to obtain their passports. Tunisian law guarantees to all of its citizens the right to judicially contest the decisions of the administration, including on the issuance of passports.

282. On 24 December 1999, the Permanent Mission sent a letter to the Special Rapporteur in reply to his letter of 13 August 1999. The Government informed the Special Rapporteur that during the judicial proceedings Ms. Nasraoui has benefited from all the judicial guarantees provided by Tunisian law. She was sentenced, along with others, by the sixth correctional tribunal of first instance of Tunisia.

283. On 10 July 1999, 25 lawyers intervened during the judicial hearing. They were given 10 hours in order to present their client's defence. A subsequent lawyer wanted to read a document in a foreign language, however he was not authorized and left the room. Consequently, according to the provisions of the Criminal Procedural Code of Tunisia, the tribunal closed the hearing and decided on 14 July 1999 for the deliberations on the case and for the reading of the judgement. The fact that the judgement was pronounced in the absence of the lawyers does not constitute a contravention of the articles of the Criminal Procedure Code, including article 162 and subsequent articles. It was noted that the act of reading the sentence does not require the presence of lawyers, even though it is a public act.

284. Ms. Nasraoui and the Public Ministry have submitted their case to the Court of Cassation. The decision is pending.

285. In regard to the previous allegations concerning the ransacking of the office of Ms. Nasraoui, it was noted that the said allegations have been investigated by the Public Ministry which has issued two reports containing the findings of the investigation. The first report was submitted to the Special Rapporteur on 30 September 1999. The second report indicated that it has not been possible to identify those responsible for the above-mentioned allegations.

Observations

286. The Special Rapporteur thanks the Government for its replies. The Special Rapporteur would like to point out that he has not received the first report of the Public Ministry concerning the findings of the investigation in the case of Ms. Nasraoui.

Turkey

Communication to the Government

287. On 17 February 1999, the Special Rapporteur transmitted an urgent appeal to the Government concerning the case of Abdullah Öcalan. It was reported that his attorney, Britta Böhler, was not allowed to enter Turkey to visit her client. According to the information received, Dr. Böhler and two of her colleagues flew to Istanbul on the evening of 16 February, but they were required by the Turkish authorities to remain in the transit area of Istanbul airport and to return to the Netherlands on the first flight scheduled for 17 February. It was further reported that Abdullah Öcalan has been denied access to his attorney in Turkey, Feridum Çelik.

288. On 23 February 1999, the Special Rapporteur transmitted an urgent appeal jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture concerning the alleged detention of eight lawyers from the local headquarters of the People's Democracy Party (HADEP) in Diyarbakir, including Mr. Çelik, who is the Provincial President of HADEP. A delegation from the Diyarbakir Bar Association reportedly requested the State Security Court Prosecutor to ensure that the eight lawyers are questioned by a prosecutor rather than the police, as required by Turkish law in cases where lawyers have been detained. The prosecutor reportedly responded that this would not be possible. Relatives' petitions seeking confirmation of the detention have allegedly not been accepted by the prosecutor. Moreover, it was also reported that there have been large-scale detentions of HADEP members throughout the country.

289. On 4 March 1999, the Special Rapporteur transmitted a joint urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the case of lawyers representing Abdullah Öcalan, who were allegedly being persecuted. It was reported that Ahmet Zeki Okuoglu and Hatice Korkut, who visited Abdullah Öcalan on the prison island of Imrali where he was being held, were particularly at risk. Both lawyers were reportedly kicked and punched as they arrived at the quayside at Mudanya to set off for the prison island. Both lawyers and their families allegedly received death threats.

290. Further information was received concerning an incident involving four lawyers working on Abdullah Öcalan's case: the two above-mentioned lawyers, and Osman Baydemir and Medeni Ayhan. It was reported that the four lawyers held a press conference at the Press Museum in the Cagaloglu district of Istanbul on 26 February 1999. As they entered the museum, they were reportedly jostled by an angry crowd. Osman Baydemir was arrested in connection with a statement he had made some weeks earlier regarding the Öcalan case; he was subsequently released. After the press conference, the lawyers were unwilling to leave the building as there was a large crowd shouting slogans and threats. The police eventually had to escort the four to safety. As a result of the threats and harassment, the lawyers are reported to have suspended their representation of Abdullah Öcalan, saying that they cannot continue in their duty under the current circumstances, and that his trial cannot be considered fair unless he is properly assisted by competent and committed defence counsel.

291. Moreover, alleged death threats have also been received by several lawyers and human rights defenders. In this regard, the Special Rapporteur notes that an urgent action concerning these individuals was transmitted on 26 February 1999 by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

292. On 5 March 1999, the Special Rapporteur sent a letter to the Government concerning his urgent appeals of 17 February 1999, 23 February 1999 and 4 March 1999, as well as his prior letters of 16 February 1996, 21 May 1997 and 7 November 1997 in which he requested to investigate, in situ, allegations concerning the independence of judges and lawyers. Owing to the recent allegations that a large number of lawyers had been arrested and/or threatened as a result of carrying out their functions, the Special Rapporteur sought as a matter of urgency an invitation from the Government to undertake an in situ visit to the country at the earliest time possible.

293. On 3 May 1999, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture concerning lawyers representing Abdullah Ocalan who were allegedly assaulted and intimidated by police and others. The lawyers involved are: Ahmet Zeki Okçuolu, Irfan Dürdan, Niyazi Bulgan, (Ms.) Mukrime Tepe, Ercan Kanar, (Ms.) Fatma Karaka, Refik Ergun, Ahmet Avar, Turgay Kaya, (Ms.) Derya Bayr, Hasip Kaplan, Niyazi Çem, Sait Karabakan, (Ms.) Zeynei Polat, (Ms.) Hatice Korkurt, Doan Erba, Filiz Kalayc and Fehim Güne.

294. According to the information received, Niyazi Bulgan and Irfan Dündar were beaten by uniformed police officers inside the court building during a hearing in the trial of Abdullah Ocalan on 30 April 1999. It was reported that the plaintiffs, who were families of soldiers supposedly killed by the PKK, applauded when somebody in the courtroom shouted, "They are beating up a lawyer", in response to this disturbance, the judge reportedly told the plaintiffs to calm down and did not call for an investigation into the alleged attack against the defence lawyers. It was further reported that the observers saw projectiles, including stones and metal objects, being thrown at the defence lawyers, who had to leave the courtroom through a cordon of police officers. All the defence lawyers were reportedly taken to the police station adjoining the court, supposedly for their own safety. It was alleged, however, that the police officers who eventually took them away in a police van threatened to kill them. The lawyers were then taken to the marketplace of Yeniehr where police officers allegedly beat and kicked them. Ms. Tepe, Ms. Bayr, Mr. Avar, Mr. Bulgan and Mr. Dundar were injured as a result. It was reported that the Ankara Medical Chamber examined the lawyers and confirmed that they had suffered severe bruising and cuts from sharp instruments.

Communication from the Government

295. On 26 February 1999, the Permanent Mission sent to the Special Rapporteur the text of the press conference of the Prime Minister held on 21 February 1999 concerning the arrest of Abdullah Ocalan by the Turkish security forces. The Prime Minister stated that Abdullah Ocalan would receive a fair trial as the judiciary in Turkey was independent. Further, the Prime Minister stated that at the end of the custody period Mr. Ocalan would be brought before the judge, after which he could meet with his lawyers and hire the lawyers he preferred. If this

did not happen, the State would provide him with a lawyer. With regard to the possibility of having observers at the trial of Mr. Öcalan, the Prime Minister indicated that it was up to the judge to admit the public and members of press to the trial.

296. On 9 March 1999, the Permanent Mission sent to the Special Rapporteur a "fact sheet" regarding the apprehension and forthcoming trial of Abdullah Öcalan. According to the information provided, proceedings regarding the testimony of the accused were completed on 22 February 1999 by the Public Prosecutor. Following his interrogation by the Office of the Reserve Judge of Ankara State Security Court, he was arrested under article 125 of the Turkish Penal Code for the crime of acting to establish a separate State by separating a part of the State territory from the State administration. He was taken to Imrali Closed Prison on the same day.

297. Lawyers Ahmet Okçuoglu and Hatice Korkut visited Abdullah Öcalan on 25 February 1999, their security being safeguarded. The lawyers held a press conference on 26 February 1999 and announced their withdrawal from the case as their security had not been safeguarded. The allegations of these lawyers were baseless. The security of these lawyers was safeguarded during their transport to and from Imrali and they were accompanied by the Judge of Mudanya Criminal Court of Peace. The lawyers did face the reaction of the people during their departure from Mudanya.

298. On 22 March 1999, the Permanent Mission sent a letter to the Special Rapporteur in reply to his urgent appeal of 4 March 1999. According to the information provided, lawyers Ahmet Okçuoglu and Hatice Korkurt went to the island of Imrali and met the accused detainee on 25 February 1999, their security being provided. On 8 March 1999, Mr. Ahmet Zeki Okçuoglu and his brother, lawyer Selim Okçuoglu, lawyers Niyazi Bulgan and Irfan Dundar were given power of attorney by Abdullah Öcalan. Consequently, Mr. Ahmet Zeki Okçuoglu met Öcalan for a second time on 11 March 1999. The meeting lasted for 45 minutes. Subsequently, Mr. Okçuoglu revealed at a press conference that he had found the accused detainee in very good health. Lawyers Selim Okçuoglu, Niyazi Bulgan and Irfan Dundar visited Öcalan on 16 March 1999 and stayed for four hours. Mr. Ahmet Zeki Okçuoglu stated that Abdullah Öcalan had given him power to appoint further legal representatives for his trial, thus 15 lawyers will be present during the hearings.

299. On 27 May 1999, the Permanent Mission sent to the Special Rapporteur the unofficial translation of the statement made by the Chief Prosecutor of the State Security Court of Ankara on 25 May 1999, regarding the trial of Abdullah Öcalan which was planned to commence on 31 May 1999 on the island of Imrali. The Permanent Mission also sent to the Special Rapporteur a list of the local and foreign persons who were authorized to follow the hearings. The list was prepared on the basis of accepting 12 people each day, in accordance with the capacity of the premises of the court.

300. On 9 July 1999, the Permanent Mission sent a letter to the Special Rapporteur in reply to his letter of 23 February. The Ministry of Justice and the Ministry of the Interior reported that the lawyers concerned had been taken into custody on 16 and 17 February by the Directorate of Security of Diyarbakir, on the grounds of protesting and demonstrating against the arrest of Abdullah Öcalan. They were released on 22 February, following their interrogation, their cases being continued. It was established through medical reports that the lawyers were not subjected

to any torture or ill-treatment during their stay in custody. Further, it was not possible to provide concrete information on allegations of "large-scale detentions", however, a list of the persons detained and released in the provinces which were mentioned in the letter of the Special Rapporteur was provided.

301. On 24 June and 1 and 27 July 1999, the Permanent Mission sent letters to the Special Rapporteur providing information concerning amendment of article 143 of the Turkish Constitution and further legislative reforms relating to an ongoing human rights reform process. According to the constitutional reform, the military member of the three-judge panel of State Security Courts was removed.

Observations

302. The Special Rapporteur thanks the Government for its replies and responses. The Special Rapporteur records his disappointment that he was not permitted to visit Turkey for an in situ mission at the height of the various alleged incidents so that he might verify the allegations of harassment and intimidations of Mr. Ocalan's defence lawyers.

United Kingdom of Great Britain and Northern Ireland

303. Following his report to the fifty-fourth session of the Commission on Human Rights on his mission to the United Kingdom (E/CN.4/1998/39/Add.4) the Special Rapporteur dealt with two issues, namely, intimidation and harassment of defence lawyers and the murder of Patrick Finucane, in his report to the fifty-fifth session (E/CN.4/1999/60, paras. 185-198). Since the report the tragic and brutal murder of well-known defence lawyer Rosemary Nelson on 5 March 1999 in Belfast stunned and shocked many and left once again a chilling effect on the independence and security of defence lawyers in Northern Ireland. The Special Rapporteur reported this sad development in his oral statement to the Commission on 12 April 1999. There was earlier a memorial service for Ms. Nelson in the Palais de Nations, attended by many including the Chairperson of the Commission and the High Commissioner for Human Rights.

304. The Special Rapporteur continued to monitor developments and to this end exchanged considerable communications in writing and had oral discussions with all concerned in this matter. In his meeting with the then Secretary of State for Northern Ireland, Ms. Mo Moland, in London on 14 April 1999 the Special Rapporteur, inter alia, expressed his appreciation for the initiative taken by the Government to call an independent investigation into the murder of Rosemary Nelson. However, he expressed the view that the involvement of officers of the Royal Ulster Constabulary (RUC) in the investigation could adversely affect the integrity of the investigation. He also reiterated his earlier call for an independent judicial commission inquiry into the murder of Patrick Finucane. He said that he was more concerned over possible State collusion in that murder than in the actual person who had committed the murder. The Secretary of State in response said, inter alia, that investigation into the Rosemary Nelson murder needed the assistance of the RUC. With regard to the Patrick Finucane murder, she said that she was interested in apprehending and bringing to justice the person or persons who actually committed the murder. The Special Rapporteur continued to correspond with the office of the Secretary of State on these issues.

305. While in London, on 14 April 1999 the Special Rapporteur had discussions with John Stevens, the Deputy Chief Constable of the Metropolitan Police, who had been called upon to investigate the Patrick Finucane murder for the third time. On 15 April 1999, he also met Mr. Colin Port, the Deputy Chief Constable of Norfolk who was called in to investigate the Rosemary Nelson murder. Since then the Special Rapporteur continued contacts with both Mr. Stevens and Mr. Port, in person and by correspondence, in connection with their respective investigations. On 21 January 2000 the Special Rapporteur met again with Mr. Port in London and had detailed discussions on developments, problems and progress with regard to his investigations into the Rosemary Nelson murder.

306. On 15 April 1999 the Special Rapporteur met two members of the Commission on Policing in Northern Ireland (the "Chris Patten Commission"), including Sir Chris Patten himself, and expressed concern over the relationship between defence lawyers and the RUC, and the investigations into the two murders.

307. The Special Rapporteur continued to receive considerable materials from NGOs, particularly the British Irish Watch who have done close monitoring of developments in Northern Ireland with regard to these issues. The Special Rapporteur was pleased to note the improved cooperation extended to these NGOs by the authorities concerned, including the two lead investigators. In this regard, the Special Rapporteur met representatives of the NGOs in London on 20 January 2000 and received a detailed input on the latest developments.

308. In another development, in a communication dated 10 January 2000, the Northern Ireland Office informed the Special Rapporteur that the Director of Public Prosecutions (DPP) of Northern Ireland had considered the findings of the investigation by Commander Mulvihill into allegations of threats made against Rosemary Nelson and had directed, on grounds of insufficient evidence, that there should not be any prosecution.

309. In yet another development, the Special Rapporteur learned that on 23 June 1999 one William Stobie was charged in court with the murder of Patrick Finucane. In a communication dated 14 September 1999 from the Office of John Stevens, the Special Rapporteur was informed that the investigation into aspects of collusion arising from the report by British Irish Watch was still in progress.

310. In response, on 23 September 1999, the Special Rapporteur informed the Office of John Stevens that while he was pleased to note that a suspect had been charged with the murder of Patrick Finucane, the background of the investigation leading to this charge and Mr. Stobie's revelations to the court raised serious concerns. (Mr. Stobie was charged in June 1991 with firearms offences relating to the murder but the prosecutor offered no evidence and he was acquitted.) The Special Rapporteur again reiterated his main concern about State collusion in the murder and expressed his previous call for a judicial commission of inquiry into that aspect of the case.

311. In the light of the charge preferred against Mr. Stobie, the Special Rapporteur has learned that the Government has taken the stand that any form of commission of judicial inquiry into the murder would have a prejudicial effect on the pending criminal proceedings.

312. With regard to harassment of defence lawyers, the Special Rapporteur is pleased to note that since the introduction of audio recording of interviews at the Castlereagh holding centre on 10 January 1999 there have been no complaints against RUC officers abusing lawyers during interrogations, though there have been complaints of such abuse outside Castlereagh.

Observations

313. The Special Rapporteur wishes to express his appreciation to the Government of the United Kingdom, and in particular the Northern Ireland Office, John Stevens, Colin Port and the NGOs, particularly Ms. Jane Winter of British Irish Watch, for their ready cooperation and assistance. Despite the sensitive, delicate and confidential nature of the two investigations, both John Stevens and Colin Port were open and, as far as possible, transparent in their discussions and communications with the Special Rapporteur. In view of the confidential nature of some of the information the Special Rapporteur received, he had to exercise restraint in disclosure. Again, owing to space constraints the Special Rapporteur is unable to set out all the information and materials he has gathered on these issues. The Special Rapporteur is also conscious of the delicate peace process in Northern Ireland. It is against this backdrop that the Special Rapporteur makes the following observations.

Murder of Patrick Finucane

314. In a communication to the Special Rapporteur in November 1999, John Stevens indicated that he would require another six months with regard to his investigations, including into the aspects of alleged collusion. In an earlier correspondence, dated 27 May 1999, to the Committee on the Administration of Justice in Belfast and copied to the Special Rapporteur, Mr. Stevens indicated that at no time during his previous two investigations did he investigate the murder of Patrick Finucane. Patrick Finucane was murdered on 12 February 1989. It now appears that the murder itself was not thoroughly investigated until John Stevens was called for a third time in April 1999. Any earlier investigation could only have been carried out by the RUC.

315. When William Stobie was charged in court in June 1999 for the murder of Patrick Finucane, his lawyer informed the court, inter alia, that the bulk of the evidence against his client was known to the authorities for almost 10 years. If that was the case, why was Mr. Stobie not prosecuted for murder earlier? He was charged only with a firearms offence, and even that was dropped by the DPP when the trial commenced on 23 January 1991. The court then recorded a finding of "not guilty". Responding to the murder charge, Mr. Stobie said to the court, "Not guilty of the charge that you put to me tonight. At that time I was police informer for the Special Branch. On the night of the death of Patrick Finucane I informed the Special Branch on two occasions by telephone of a person who was to be shot. I did not know at that time who was to be shot."

316. The Special Rapporteur notices the inconsistencies and contradictions emerging in the statements of the various personalities involved in this whole saga. Such inconsistencies and contradictions generally arise in cases where there have been cover-ups by interested parties, including State organs. More than 10 years after a murder a person is charged. Yet the same person was charged back in 1991 for another offence related to the murder. It is now alleged that the bulk of the evidence now in the possession of the prosecution was then available. Questions

of the credibility and integrity of initial investigations are emerging and will continue to emerge. In the last 11 years, John Stevens was called in three times. It is now claimed that in the previous two investigations he did not investigate the actual murder. It should not be seen that every time when there is a public outcry for a judicial commission of inquiry fresh investigations are called to stall such an inquiry. To date, the report of Mr. Steven's second investigation has not been made public.

317. In the circumstances, the Special Rapporteur once again reiterates that only a judicial commission of inquiry can get to the truth of what really happened and the circumstances occurring prior to the murder in 1989 and put to rest all doubts and suspicions. With respect, the Special Rapporteur does not consider that a judicial commission of inquiry would be prejudicial to any criminal proceedings in the matter. In any event, that the DPP will indeed eventually proceed with the prosecution of William Stobie is not certain. As happened in 1991, Mr. Stobie may yet be found not guilty if the DPP decides not to proceed any further with the prosecution. Hence, after having delayed prosecution for 10 years, prosecutions or possible prosecutions should not be used as a reason not to set up a public judicial commission of inquiry into the murder to ascertain all the circumstances, including whether there was State collusion.

Murder of Rosemary Nelson

318. While appreciating the decision of the DPP not to prefer any charges on the grounds of insufficient evidence, with regard to the complaints of Rosemary Nelson against RUC officers based on the Mulvihill report, the Special Rapporteur remains concerned over the extent and thoroughness of the investigation. The full Mulvihill report should be made public.

319. With regard to the investigation into the murder by the Colin Port team, though the Special Rapporteur views the delay with concern, he is aware that this investigation is unlike an ordinary murder investigation and hopes that it can be expedited. What is of concern to many with whom the Special Rapporteur has spoken is that the investigation will end the same way as did the Patrick Finucane investigation. This should be avoided.

320. The Special Rapporteur appeals to the Government of the United Kingdom to take the necessary steps to avoid any allegation of impunity being levelled against it in connection with the murders of the two lawyers.

Harassment of defence lawyers

321. While the introduction of audio recording had deterred RUC officers from uttering abuse, it is still vital that solicitors should be present during interrogation. Detainees must contend with complex laws concerning the drawing of adverse inferences from the failure to answer questions, and lawyers can only adequately advise their clients if they are present. For detainees held under the Police and Criminal Evidence Order, lawyers are allowed to be present during interviews in Northern Ireland, but not during interviews in Northern Ireland of detainees held under the Prevention of Terrorism Act. In England, lawyers are allowed to be present during both types of interview. The police in England do not say that their ability to investigate terrorist-related crimes is hampered by having solicitors present.

Chris Pattern report

322. While welcoming this report, the Special Rapporteur notes that there is no reference to police harassment of defence lawyers or the need for police and lawyers to understand each other's roles and to work in harmony without confrontation.

Yemen

Communication to the Government

323. On 11 January 1999, the Special Rapporteur transmitted an urgent appeal jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture, concerning the cases of Abu al-Hassan al Medhar, Ahmed Mohammad Ali Atif and Sa'ad Mohammad Atif who were reportedly arrested in connection with the kidnapping of 16 tourists, which led to an armed clash in which several persons were killed. According to the information received, the three men may face execution if found guilty as charged. There were allegations that these persons have been held in incommunicado detention, some in shackles, and denied legal representation. It was further reported that statements made by the defendants have been released to the press by the authorities.

Observation

324. The Special Rapporteur is awaiting a reply from the Government to his communication.

Yugoslavia

Communication to the Government

325. On 2 November 1999, the Special Rapporteur sent a letter to the Government concerning the situation of judges who are members of the Association of Judges of Serbia. According to the information received, the President of the Supreme Court of Serbia, Balsa Govedarica, threatened judges who are members of the Association with removal from office unless they revoked their membership. In this connection, it was reported that the Supreme Court of Serbia had ruled on 17 February 1999 against the appeal submitted by the Association of Judges of Serbia, thereby upholding the decision of the Serbian Ministry of the Interior not to permit the Association to be entered into the Register of Associations of Citizens. The Supreme Court upheld the view that only those associations of citizens which are considered to be legal entities have to be registered in the public records. It was alleged that the presidents of various courts had recently started to summon judges to meetings to investigate their membership in the Association. It was further alleged that judges were threatened with removal from office if it was proven that they were members of the Association.

Observation

326. The Special Rapporteur is awaiting a response from the Government.

Report of the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro)

327. The Special Rapporteur has also taken note of this report in which it is reported that the first casualty of the war was the rule of law (A/54/396, para. 100). Within the Federal Republic of Yugoslavia, formal declaration of martial law gave officials of the Ministry of the Interior and the Yugoslav army vast powers over most areas of civil activity. Moreover, even in substantive areas where such power had not been formally extended to the military by the civil authorities, the Special Rapporteur noted that the Yugoslav army and the Serbian police either took or were granted effective control. The Republic of Montenegro did not recognize the declaration of martial law, but actions by the Yugoslav army on the territory of Montenegro challenged and threatened civil authority in that republic. Federal authorities denied the immunity of elected or appointed officials by attempting to mobilize them, and the army moved to arrest several officials in Serbia and in Montenegro for refusing mobilization notices. Charges were brought against the elected mayor of Cacak for disturbing public order, based on statements the mayor had made attributing responsibility for the social dislocation caused by the war. Changes to the Law on Criminal Procedure removed many legal protections of the accused and substituted expedited procedures that allowed, for example, for searches without prior warrants and police investigations without prior request of the court or State prosecutor.

Observation

328. The Special Rapporteur will continue to liaise with the Special Rapporteur concerning related issues.

VIII. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

329. Preparations for in situ missions require considerable efforts on the part of Governments and the special rapporteur concerned. Consequently, precautionary measures should be adopted by the Office of the High Commissioner for Human Rights in order to avoid situations similar to the cancellation of the mission to South Africa about which the Special Rapporteur was not informed until the very last minute when he realized that there were no instructions given to local agents for the issuance of the travel ticket. The Special Rapporteur trusts that the administration of the Office of the High Commissioner will take note of the several missions the Special Rapporteur will undertake this year and make available the financial resources for the same.

330. The Special Rapporteur has noted that there has been an increase in the responses submitted by Governments to his communications. However, the Special Rapporteur continues to observe that Governments do not reply to urgent appeals in a timely manner. The Special Rapporteur has also noted that there has been an increase in the number of urgent appeals submitted by him jointly with other thematic mechanisms and country rapporteurs. The Special Rapporteur considers this development to be a positive one in light of the general appeal to better coordinate the work of the thematic mechanisms created by the Commission on Human Rights.

331. The Special Rapporteur has noted that there has been an increase in the number of allegations received involving human rights defenders who have been the target of attacks. The Special Rapporteur wishes to emphasize the elements of his mandate, which confines him to attacks on practising lawyers who have been subject to any form of harassment, intimidation or threat resulting from their carrying out their professional duties as lawyers.

332. The Special Rapporteur continues to be concerned over the possible proliferation of standards. Unless standards are uniform and consistent there can be confusion. The Special Rapporteur will continue to work closely with intergovernmental organizations on this matter. If the United Nations Basic Principles on the Independence of the Judiciary are found to be too general and basic in substance, then there may be a justification for reviewing them.

333. The Special Rapporteur will continue working closely with the Activities and Programmes Branch of the Office of the High Commissioner for Human Rights to assist with activities concerning technical assistance requested by Governments.

334. The Special Rapporteur continues to be concerned over the difficulties in the Office of the High Commissioner for Human Rights in having laws, legislation and documents, including correspondence, translated professionally into the English language. A recent incident is a glaring and embarrassing example. A two-page letter was addressed to the Special Rapporteur by the Government of Switzerland. The Special Rapporteur, while in Kuala Lumpur, noticed a difficulty and delay over the translation at the Office of the High Commissioner. He called for the letter and requested the Embassy of Switzerland in Kuala Lumpur to assist him in the translation! The Embassy obliged.

B. Recommendations

335. Arising from some of the observations made earlier under country situations, his activities and the conclusions, the Special Rapporteur wishes to make some specific recommendations.

336. In the case of the United Kingdom and Northern Ireland, the Special Rapporteur reiterates his earlier recommendations that the Government should establish an independent judicial inquiry without any further delay to investigate the murder of Patrick Finucane, with particular reference to whether there was any State collusion in that murder. In this regard, the Special Rapporteur urges the Government to make public the second report of John Stevens. With regard to the murder of Rosemary Nelson, the Special Rapporteur urges Colin Port and his team to expedite their investigations. In this regard, the Special Rapporteur urges the Government to make public the Mulvihill report on the investigations into the complaint lodged by Rosemary Nelson with RUC.

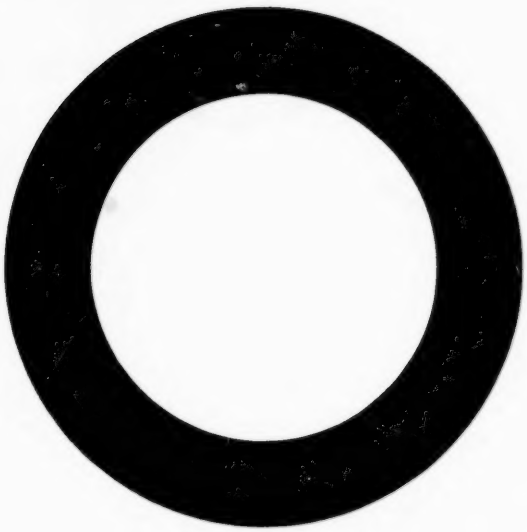
337. With regard to Switzerland, the Special Rapporteur once again urges the Government to offer adequate compensation to Mr. Clement Nwankwo.

338. With regard to human rights defenders, the Special Rapporteur urges the Commission to give serious consideration to providing a monitoring mechanism to implement the Declaration on the Right and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

339. In paragraph 4 of resolution 1994/41 creating the mandate, the Commission urged all Governments to assist the Special Rapporteur in the discharge of his mandate and to transmit to him all the information requested. In the spirit of this paragraph, the Special Rapporteur once again appeals to Governments to respond to his interventions promptly and to respond positively to his requests to undertake in situ missions.

340. The Special Rapporteur calls on Governments, national judiciaries, Bar Associations and NGOs to submit to him any court judgements and any legislation affecting the independence of the judiciary and the legal profession for his consideration, irrespective of whether such judgements and legislation have the effect of enhancing or restricting the independence of judges and lawyers.

341. The Special Rapporteur requests that the Office of the High Commissioner for Human Rights take note and make available both financial and human resources for the several missions that the Special Rapporteur would be undertaking this year.



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Fifty-sixth session
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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy, submitted in accordance with Commission resolution 1999/31

Corrigendum

1. Paragraph 63, line 3

   For satisfactory read unsatisfactory

2. Paragraph 302

   Line 6: for 5 March 1999 read 15 March 1999

3. Paragraph 304, line 3

   For Ms. Mo Moland read Dr. Mo Molam

4. Paragraphs 307, 309, 313

   For British Irish Watch read British Irish Rights Watch